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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NATIONAL UTILITY SERVICE, INC., :

Plaintiff, :

-against- :

TIFFANY & CO. and  
TIFFANY AND COMPANY, :

Defendants. :

-----X

DEPOSITION of National Utility Service, Inc.,  
by CHRISTINE AMUNDSEN, taken by Defendants at the  
offices of Dreier LLP, 499 Park Avenue, New York,  
New York on Tuesday, March 4, 2008, commencing at  
10:13 a.m., before Elizabeth Santamaria, a Certified  
Shorthand (Stenotype) Reporter and Notary Public  
within and for the State of New York.

6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1 Amundsen</p> <p>2 A. Towards the beginning.</p> <p>3 Q. Are you the most senior consultant</p> <p>4 of the six consultants?</p> <p>5 A. Yes.</p> <p>6 Q. Do you train other consultants in</p> <p>7 how to perform their services?</p> <p>8 A. Yes.</p> <p>9 Q. What types of things do you train</p> <p>10 these consultants in?</p> <p>11 A. Well, throughout my career I have</p> <p>12 done that. If you mean -- I mean lately I have</p> <p>13 been visiting clients and I will have a junior</p> <p>14 person with me.</p> <p>15 Q. In the production of documents by</p> <p>16 NUS there was some memoranda to the file that I</p> <p>17 saw you wrote. Is that something that you do as</p> <p>18 part of your job?</p> <p>19 A. Yes.</p> <p>20 Q. Did someone tell you that it was a</p> <p>21 good idea to create these memoranda to the files</p> <p>22 to memorialize certain things?</p> <p>23 A. It's policy.</p> <p>24 Q. And you say it's policy. Where does</p> <p>25 that policy come from?</p>	<p style="text-align: right;">Page 20</p> <p>1 Amundsen</p> <p>2 A. In the computer system.</p> <p>3 Q. And what templates are you aware of</p> <p>4 that exist in the computer system?</p> <p>5 A. Various ones, numerous ones</p> <p>6 pertaining, you know, to begin a report on many of</p> <p>7 the types of recommendations we make.</p> <p>8 Q. So on your system you are aware of</p> <p>9 the existence of various templates that are used</p> <p>10 at NUS to communicate with clients; is that right?</p> <p>11 A. To begin drafting a specific</p> <p>12 recommendation.</p> <p>13 Q. Did anyone ever tell you why there</p> <p>14 existed templates on the NUS system to guide the</p> <p>15 drafting of materials to clients?</p> <p>16 A. No one told me why.</p> <p>17 Q. Do you have an understanding about</p> <p>18 why they are used at NUS?</p> <p>19 A. My understanding, yes.</p> <p>20 Q. What is your understanding?</p> <p>21 A. Is because they chose wording that</p> <p>22 was the most appropriate, the best wording to</p> <p>23 explain what we were recommending. So once they</p> <p>24 had finalized that this was a very good wording,</p> <p>25 that was, you know, chosen as the template or</p>
<p style="text-align: right;">Page 19</p> <p>1 Amundsen</p> <p>2 A. I use the word "policy." I couldn't</p> <p>3 pull out a policy that I can think of.</p> <p>4 Q. Is there a policy manual?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Have you ever seen one?</p> <p>7 A. Not exactly.</p> <p>8 Q. Have you ever seen a book that</p> <p>9 contains form documents that you should use in</p> <p>10 your consulting services?</p> <p>11 A. In the past, the long past.</p> <p>12 Q. What do you recall seeing as forms</p> <p>13 that you should use in providing the services?</p> <p>14 A. I wouldn't call it a form. A sample</p> <p>15 letter. That's the type of thing.</p> <p>16 Q. Where did you see that?</p> <p>17 A. Early in my career someone had a</p> <p>18 book of sample letters.</p> <p>19 Q. How about a sample report and</p> <p>20 recommendation? Is there such a thing?</p> <p>21 A. There is templates.</p> <p>22 Q. Does that still exist, these</p> <p>23 templates?</p> <p>24 A. Yes.</p> <p>25 Q. Where are those templates?</p>	<p style="text-align: right;">Page 21</p> <p>1 Amundsen</p> <p>2 designated the template.</p> <p>3 Q. Are there also templates for</p> <p>4 reporting progress to clients?</p> <p>5 A. No.</p> <p>6 Q. When you said the best wording, was</p> <p>7 that because that wording corresponded with</p> <p>8 language with contracts that NUS had with clients?</p> <p>9 A. No, it wasn't -- to my knowledge, it</p> <p>10 wasn't based on that.</p> <p>11 Q. Did the templates contain words like</p> <p>12 "savings"?</p> <p>13 A. No doubt.</p> <p>14 Q. Did they contain words like</p> <p>15 "refund"?</p> <p>16 A. Sometimes.</p> <p>17 Q. Did they contain words that would</p> <p>18 assist you in communicating to the client what NUS</p> <p>19 believes projected savings in the future might be</p> <p>20 in connection with something you might be doing?</p> <p>21 A. Sometimes.</p> <p>22 Q. And those would be categories of</p> <p>23 types of things that NUS might seek to recover a</p> <p>24 fee for, correct? Savings and refunds?</p> <p>25 A. Could you say that one more time?</p>

8 (Pages 26 to 29)

Page 26	Page 28
<p>1 Amundsen 2 implemented by that customer? 3 A. Yes. 4 Q. Give me a -- more than five? 5 A. No. 6 Q. Approximately how many? 7 A. Three. Three. 8 Q. Does that include this case? 9 A. No. 10 Q. Did any of those cases where you 11 were involved in, the three cases, arise from a 12 billing mistake by the power company? 13 A. No. 14 Q. Have you ever been involved at NUS 15 in any other lawsuit that arose from a claim for a 16 fee because of a billing mistake? 17 A. Well -- no. 18 Q. Have you ever been involved in 19 another case at NUS where a new meter was 20 installed by the power company and mistakenly 21 mistagged to another customer? 22 A. No. 23 Q. So is it fair to say that the first 24 time you have ever personally been involved in a 25 case at NUS which concerned a mistagged meter</p>	<p>1 Amundsen 2 Minolta Corporation. 3 Q. In New Jersey? 4 A. Yes. And I prepared income taxes 5 for H &amp; R Block. 6 Q. Anything else you did after college 7 and before joining NUS? 8 A. I had a six-month position with IBM. 9 It was just a temporary position. And I spent 10 many years just raising my two children. 11 Q. And was NUS the first time you had 12 been involved in the energy business? 13 A. Yes. 14 Q. Is there a standard percentage that 15 you generally are compensated based upon your 16 generation of revenue? 17 A. Yes. 18 Q. What is that percentage? 19 A. .1 percent. 20 Q. .1 percent? 21 A. Yes. 22 Q. One-tenth of 1 percent? 23 A. Yes. 24 Wait, excuse me. I might have 25 misstated that.</p>
Page 27	Page 29
<p>1 Amundsen 2 would be this case? 3 A. Yes. 4 Q. And are you aware of NUS ever having 5 sued any other customer before to recover a fee 6 based upon a mistagged meter? 7 A. I'm not aware. 8 Q. Is your compensation dependent 9 upon -- withdrawn. 10 Do you receive the equivalent of a 11 commission compensation? 12 A. As part of my salary? 13 Q. Yes. 14 A. Yes. 15 Q. So if and to the extent NUS has a 16 recovery in this case, do you get a percentage of 17 the recovery? 18 A. To the best of my knowledge, no. 19 Q. Why would that be? 20 A. Because once we incur legal costs, 21 the consultant is no longer entitled to 22 commission. 23 Q. Prior to joining NUS 22 years ago, 24 what did you do? 25 A. I worked customer service for</p>	<p>1 Amundsen 2 .01. 1 percent. 3 Q. You are saying 1 percent? 4 A. Yes, 1 percent. 5 Q. 1 percent of revenue? 6 A. Yes. 7 Q. So \$10,000 for every million dollars 8 of revenue; is that right? 9 A. Yes. 10 Q. Do you get a commission report on a 11 regular basis? 12 A. No. 13 Q. Is it part of a year-end bonus? 14 A. No. 15 Q. How are you compensated for 16 commission? 17 A. Once a month, dependent on reaching 18 target levels. 19 Q. The other thing, the other -- you 20 said a percentage of NUS's fees are generated from 21 shared savings. You said the other was from 22 revenue-producing activities. 23 A. Yes. 24 Q. What would those be? 25 A. Third-party supply broker</p>

12 (Pages 42 to 45)

Page 42	Page 44
<p>1 Amundsen</p> <p>2 "R/C." right?</p> <p>3 A. Right. But by that type of R/C, I</p> <p>4 believe that's more of a designation.</p> <p>5 Q. In looking at Exhibit 43 for</p> <p>6 identification --</p> <p>7 First of all, have you ever seen</p> <p>8 this before?</p> <p>9 A. Yes.</p> <p>10 Q. Does this document provide a history</p> <p>11 of the recommendations made by NUS to Tiffany</p> <p>12 during the life of the parties' relationship with</p> <p>13 each other?</p> <p>14 A. I believe so.</p> <p>15 Q. And it would show both</p> <p>16 recommendations that were made and then of those</p> <p>17 recommendations which ones were implemented,</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. And isn't it fair to say that if you</p> <p>21 put aside the dispute in this lawsuit, all of the</p> <p>22 recommendations contained on this document are</p> <p>23 recommendations that were made by NUS for Tiffany</p> <p>24 to lower its cost of a utility?</p> <p>25 A. I have to go down the list and just</p>	<p>1 Amundsen</p> <p>2 concerning the Manhasset store, there had not been</p> <p>3 an instance where NUS had made a claim that there</p> <p>4 was an estimated savings as a result of a</p> <p>5 recommendation that was even in a six-figure</p> <p>6 amount. Isn't that right?</p> <p>7 A. Right.</p> <p>8 Q. So from 1992 to 2006 an estimated</p> <p>9 annual savings of the magnitude that is at issue</p> <p>10 in this case had never arisen between the parties.</p> <p>11 Is that right?</p> <p>12 A. Right.</p> <p>13 MR. MITCHELL: Please mark</p> <p>14 this as Exhibit 44.</p> <p>15 (Exhibit 44, two-page document</p> <p>16 bearing Bates numbers T-1 - T-2,</p> <p>17 marked for identification, as of this</p> <p>18 date.)</p> <p>19 THE WITNESS: May I take a</p> <p>20 restroom break?</p> <p>21 MR. MITCHELL: Sure.</p> <p>22 (Recess taken.)</p> <p>23 Q. Ms. Amundsen, you said in order to</p> <p>24 get commission you have to hit a target number?</p> <p>25 A. Yes.</p>
Page 43	Page 45
<p>1 Amundsen</p> <p>2 verify if I think that's the case.</p> <p>3 Yes. The recommendations were to</p> <p>4 lower the cost.</p> <p>5 Q. Am I correct in understanding the</p> <p>6 column "Estimated Savings," that would be the</p> <p>7 annual estimated savings, is that right, that was</p> <p>8 projected by NUS?</p> <p>9 A. It would be the estimated annual</p> <p>10 savings or if it were a one-time savings.</p> <p>11 Q. And if you look at the column</p> <p>12 "Estimated Savings" there is not in any of the</p> <p>13 implemented recommendations other than Manhasset,</p> <p>14 any implemented recommendation that is even a</p> <p>15 six-figure estimated savings. Isn't that right?</p> <p>16 A. I'll just verify that.</p> <p>17 On an annual basis.</p> <p>18 Q. That's correct, right?</p> <p>19 A. Right.</p> <p>20 Q. Many of the estimated savings</p> <p>21 figures are four figures on an annual basis. Is</p> <p>22 that right?</p> <p>23 A. Some are four, some are three, some</p> <p>24 are five.</p> <p>25 Q. So until this dispute arose with NUS</p>	<p>1 Amundsen</p> <p>2 Q. What was your target number for</p> <p>3 2006, 2007?</p> <p>4 A. Target for collections for myself?</p> <p>5 Q. Yes.</p> <p>6 A. Fifty -- \$52,000 a month.</p> <p>7 Q. What does that mean? Collected</p> <p>8 revenues for NUS?</p> <p>9 A. Yes.</p> <p>10 Q. Did you hit your target for 2006?</p> <p>11 A. Yes.</p> <p>12 Q. How many accounts are you assigned</p> <p>13 to, approximately?</p> <p>14 A. Approximately 135.</p> <p>15 Q. And the precise situation that arose</p> <p>16 here, which was mistagging of meters at the</p> <p>17 Manhasset store, you had never seen that before in</p> <p>18 all of your years working at NUS, right?</p> <p>19 A. Right.</p> <p>20 Q. Now, I would like to hand you what</p> <p>21 we have marked as Exhibit 44 for identification.</p> <p>22 Ms. Amundsen, I have handed you what</p> <p>23 has been marked as Exhibit 44 for identification.</p> <p>24 Is this an e-mail you wrote to Bruce Mogel on or</p> <p>25 about December 29, 2003?</p>

16 (Pages 58 to 61)

Page 58

1 Amundsen  
 2 Q. Can you describe for me how this  
 3 error was caught by NUS?  
 4 A. A woman who works in the clerical  
 5 department was — brought it to my attention. She  
 6 was looking at the bills.  
 7 Q. Was it her responsibility to look at  
 8 those bills?  
 9 A. Yes.  
 10 Q. And you say she was in the clerical  
 11 department. What were her job responsibilities at  
 12 NUS?  
 13 A. Primarily she would do billing. She  
 14 would create — she worked in creating invoices  
 15 for billing.  
 16 Q. And what is it that she saw on the  
 17 records of NUS to alert her to this issue?  
 18 MR. GOODMAN: Objection.  
 19 MR. MITCHELL: Withdrawn.  
 20 Q. Did she tell you what she saw when  
 21 she discovered this issue?  
 22 A. Yes.  
 23 Q. What did she tell you?  
 24 A. She said she — it looked like there  
 25 was much higher usage than usual for this

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1 Amundsen  
 2 particular account.  
 3 Q. And was this something that was  
 4 discovered because NUS monitors for its customers  
 5 information that's contained on utility bills?  
 6 A. I would say it was discovered as a  
 7 result of monitoring, yes, the bills.  
 8 Q. And you monitor the bills because  
 9 that's part of the services you provide to your  
 10 customers, right?  
 11 A. We monitor them for many reasons.  
 12 Q. That's one of the reasons?  
 13 A. That's one of the reasons.  
 14 Q. As part of performing your normal  
 15 and customary services for Tiffany, someone in the  
 16 clerical department brought to your attention what  
 17 appeared to be an abnormal spike in usage at the  
 18 Manhasset store, right?  
 19 A. Yes.  
 20 Q. Did you take a look at the bills  
 21 yourself?  
 22 A. I believe she brought them over to  
 23 my desk.  
 24 Q. So you actually saw the physical  
 25 bills, correct?

Page 60

1 Amundsen  
 2 A. Yes.  
 3 Q. And the chart which is attached to  
 4 Exhibit 4 for identification reflects certain  
 5 usage information, correct?  
 6 A. Yes.  
 7 Q. And it indicates that for the  
 8 eight-day period of September 19, 2006 through  
 9 September 27, 2006, the Manhasset store for  
 10 Tiffany used 61,920 hours of kilowatt-hours,  
 11 right?  
 12 A. Yes.  
 13 Q. And if I read this correctly, for  
 14 the entire month of July 26, 2006 to August 28,  
 15 2006, which is 33 days, the Manhasset store used  
 16 only 54,720 kilowatt-hours of power, right?  
 17 A. Right.  
 18 Q. So for an 8-day period in September,  
 19 the store was reflected as having used more power  
 20 than it used for an entire 33-day period between  
 21 July 26 and August 28, 2006, right?  
 22 A. Right.  
 23 Q. In your experience, that would  
 24 appear to be odd, wouldn't it?  
 25 A. Unusual.

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1 Amundsen  
 2 Q. And unless something unusual was  
 3 going on at the store to cause there to be such a  
 4 significant increase in the use of power, it would  
 5 likely be a mistake of some kind, right?  
 6 A. Yes.  
 7 Q. So you knew that already on  
 8 November 15, 2006, that unless there was some  
 9 explanation for using that much power, probably  
 10 somewhere along the line there was a mistake,  
 11 right?  
 12 A. Yes.  
 13 MR. MITCHELL: Let me have the  
 14 court reporter mark as Exhibit 45 for  
 15 identification a document Bates  
 16 stamped T968 and 969, which is a LIPA  
 17 bill to Tiffany and Company, bill date  
 18 10/6/2006.  
 19 (Exhibit 45, document bearing  
 20 Bates numbers T968 - T969, marked for  
 21 identification, as of this date.)  
 22 Q. Ms. Amundsen, I am handing you what  
 23 has been marked as Exhibit 45 for identification.  
 24 Is this a bill for Tiffany that you looked at  
 25 at or around the time you were advised of the



21 (Pages 78 to 81)

Page 78	Page 80
<p>1 Amundsen</p> <p>2 investigate forward, your initial thought was to</p> <p>3 treat it as a rate issue, right?</p> <p>4 A. No.</p> <p>5 Q. You took it to the rate department,</p> <p>6 right?</p> <p>7 A. They handle everything that has to</p> <p>8 do with recommendations, reports, analysis.</p> <p>9 They're the people that don't leave the office.</p> <p>10 Q. But if I understood you correctly,</p> <p>11 you had never had a situation of a mistagged meter</p> <p>12 before. Right?</p> <p>13 A. Right.</p> <p>14 Q. And as far as you're aware, NUS had</p> <p>15 never had this situation before, right?</p> <p>16 MR. GOODMAN: Objection.</p> <p>17 Q. To your knowledge, you are not aware</p> <p>18 of it ever having happened at NUS?</p> <p>19 A. A mistagged meter?</p> <p>20 Q. Yes.</p> <p>21 A. To my knowledge, that's right.</p> <p>22 Q. So you were operating at the outset</p> <p>23 as if this was something that was more within what</p> <p>24 you would normally and usually see in your</p> <p>25 day-to-day activities working for NUS, right?</p>	<p>1 Amundsen</p> <p>2 Q. Now, if we jump forward to the</p> <p>3 resolution, the resolution of the problem was</p> <p>4 handled by an investigation that was conducted by</p> <p>5 LIPA, right?</p> <p>6 MR. GOODMAN: Objection.</p> <p>7 A. Numerous people were involved in the</p> <p>8 investigation.</p> <p>9 Q. Well, you never went to the</p> <p>10 premises, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did anyone for NUS ever look at the</p> <p>13 meters?</p> <p>14 A. Not to best of my knowledge. We</p> <p>15 offered, I believe.</p> <p>16 Q. But you didn't go, correct?</p> <p>17 A. Yes.</p> <p>18 Q. There were representatives of LIPA</p> <p>19 that looked at the meter, correct?</p> <p>20 A. Yes, based on our asking them to do</p> <p>21 so.</p> <p>22 Q. Just people that went. Okay?</p> <p>23 A. Yes.</p> <p>24 Q. The people that went was somebody</p> <p>25 from LIPA, right?</p>
Page 79	Page 81
<p>1 Amundsen</p> <p>2 A. We're talking about a spike in</p> <p>3 usage? That's a scene in my day-to-day</p> <p>4 activities.</p> <p>5 Q. And your assumption as you are</p> <p>6 proceeding at the beginning is that at least the</p> <p>7 meter is recording usage for the premises that's</p> <p>8 getting the bill, right? That's your assumption?</p> <p>9 A. Yes.</p> <p>10 Q. So you did not operate from the</p> <p>11 assumption at the outset that Tiffany was actually</p> <p>12 receiving a bill for usage of another premises,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. So your mind set was this could be a</p> <p>16 problem with the rate that's being applied to</p> <p>17 Tiffany's usage, correct?</p> <p>18 A. No. That wasn't my mind set.</p> <p>19 Q. Did you have any mind set at all</p> <p>20 about what you thought it might be when you go and</p> <p>21 speak with Mr. —</p> <p>22 A. Mr. Hoffman.</p> <p>23 Q. — Mr. Hoffman?</p> <p>24 A. No. I didn't have — I thought this</p> <p>25 is something for the rate department to look into.</p>	<p>1 Amundsen</p> <p>2 A. Yes.</p> <p>3 Q. And there was someone from the</p> <p>4 electrical contractor who was hired by the</p> <p>5 landlord, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Albertson Electric?</p> <p>8 A. Yes.</p> <p>9 Q. Those are the people that physically</p> <p>10 inspected the boxes, correct?</p> <p>11 A. Based on our asking them to look at</p> <p>12 it.</p> <p>13 Q. Right. You communicated to the</p> <p>14 power company that we have observed something</p> <p>15 unusual and the power company sent someone out to</p> <p>16 look at it, right?</p> <p>17 A. Yes.</p> <p>18 Q. That's what happened?</p> <p>19 A. Yes.</p> <p>20 Q. And in addition the landlord's</p> <p>21 contractor took a look at it?</p> <p>22 A. Yes.</p> <p>23 Q. And ultimately it was the</p> <p>24 observations of the people who took a look at this</p> <p>25 that concluded that there was a problem in the</p>

22 (Pages 82 to 85)

Page 82

1 Amundsen  
2 tagging of the meters, correct?  
3 MR. GOODMAN: Objection.  
4 A. There is an element in there of our  
5 rate department discerning that it wasn't just the  
6 multiplier being responsible for the spike, so  
7 that caused the ultimate investigation and result.  
8 Q. Ms. Amundsen, what prevented you  
9 from contacting the power company on November 16,  
10 2006 and saying to the power company, "We have a  
11 client that has a very unusual bill for last  
12 month. Could you take a look at that, please?"  
13 What stopped you from doing that?  
14 A. That would have been premature on my  
15 part.  
16 Q. Well, Mr. Mogel simply said  
17 investigate it on November 16th, right?  
18 A. Right.  
19 Q. And then he left it to your judgment  
20 to determine the manner in which you would  
21 investigate it, right?  
22 A. Yes.  
23 Q. And I'm asking you now, what  
24 prevented you from just picking up the phone,  
25 contacting someone at the power company and

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1 Amundsen  
2 saying "This bill looks strange. The client  
3 tells me they haven't done anything unusual. Why  
4 is there so much usage reflected"? Why couldn't  
5 you do that?  
6 A. I wouldn't normally do that. I  
7 would consult with the NUS rate department first.  
8 Q. Ms. Amundsen, by this period of time  
9 you have been in this business for 20 years,  
10 right?  
11 A. Right.  
12 Q. And you have already concluded,  
13 based upon your communication with your client,  
14 that it is likely that there is some mistake here,  
15 right?  
16 A. Right.  
17 Q. The place where the mistake probably  
18 happened is at the power company, right?  
19 A. Right.  
20 Q. So wouldn't it have been simple to  
21 simply call someone, use your contacts at the  
22 power company, pick up the phone and say, "Would  
23 you please take a look at this bill"? That seems  
24 to be very simple.  
25 MR. GOODMAN: Objection.

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1 Amundsen  
2 Q. Isn't it?  
3 A. It seems simple, but it's not the  
4 way we handle cases procedurally. We rely on our  
5 rate department for analysis.  
6 Q. To build up the file?  
7 A. Build up?  
8 MR. GOODMAN: Objection.  
9 Q. I'm just asking. To build up the  
10 file?  
11 A. No, not to the build up. For advice  
12 and review and insight.  
13 Q. Isn't it what you ultimately did?  
14 Didn't you ultimately call LIPA? That's what you  
15 did.  
16 MR. GOODMAN: Objection.  
17 A. Not before we did our own group  
18 review and study of what possibilities could be,  
19 sought to make sure we had complete historical  
20 data. It's a process, it isn't a quick pick up  
21 the phone, talk to the utility.  
22 Q. Well, that's what you did, right?  
23 A. Eventually.  
24 Q. And when you picked up the phone and  
25 talked to the utility, in that first conversation

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1 Amundsen  
2 the utility told you it looks like the meters were  
3 switched. Right?  
4 MR. GOODMAN: Objection.  
5 Q. They didn't tell you that?  
6 A. Oh, switched. When you said  
7 switched, I had the wrong interpretation. They  
8 said a new meter was installed, I believe.  
9 Q. Didn't they also tell you that they  
10 looked at the Polo meter at the same time?  
11 A. Not that I recall.  
12 Q. You don't recall that?  
13 A. No.  
14 Q. Isn't it true that when you talked  
15 to the power company on December 26, 2006, that  
16 the representative for LIPA pulled up on her  
17 screen both the usage for Tiffany and Polo? You  
18 don't remember that?  
19 A. Not perfectly clearly, no.  
20 Q. And you don't remember the person  
21 telling you that when she looked at the screen,  
22 she saw not only a spike in the Tiffany usage but  
23 a similar decrease in the Polo usage at the same  
24 time?  
25 A. I remember hearing that, but I don't



30 (Pages 114 to 117)

Page 114	Page 116
<p>1 Amundsen</p> <p>2 the rate department yet, right?</p> <p>3 A. Correct.</p> <p>4 Q. And your testimony earlier was that</p> <p>5 this was something that the rate department would</p> <p>6 look into, right?</p> <p>7 A. Right.</p> <p>8 Q. So between November 15th and</p> <p>9 December 12th, this had not yet been turned over</p> <p>10 to anyone else, right?</p> <p>11 A. Right.</p> <p>12 Q. Then on the 13th, December 13th, you</p> <p>13 leave information, invoices on Paul Hoffman's</p> <p>14 desk, right?</p> <p>15 A. Yes.</p> <p>16 Q. And he turns it over to Stephen</p> <p>17 Schnaer on December 19th, right?</p> <p>18 A. Right.</p> <p>19 Q. So between November 15th and</p> <p>20 December 19th you are not aware of any</p> <p>21 investigation having been conducted internally at</p> <p>22 NUS into the Manhasset situation, right?</p> <p>23 A. I'm not aware of anything that</p> <p>24 transpired between those dates as far as</p> <p>25 investigation.</p>	<p>1 Amundsen</p> <p>2 investigation internally at NUS through</p> <p>3 December 19, 2006, right?</p> <p>4 A. Right.</p> <p>5 Q. Okay. So do you know of any</p> <p>6 investigation internally at NUS on December 20,</p> <p>7 2006?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. Because it was the date that I was</p> <p>11 given the cost analysis report.</p> <p>12 Q. So whatever investigation had taken</p> <p>13 place internally at NUS is reflected in Exhibit 2</p> <p>14 for identification; is that correct?</p> <p>15 MR. GOODMAN: Objection.</p> <p>16 A. No. There could have been other --</p> <p>17 Q. Let me rephrase it. Let me withdraw</p> <p>18 and rephrase the question. I will ask a different</p> <p>19 one.</p> <p>20 The only investigation about which</p> <p>21 you are aware that would have taken place at NUS</p> <p>22 is what is shown in Exhibit 2 for identification,</p> <p>23 correct?</p> <p>24 A. No.</p> <p>25 Q. You know of other investigations?</p>
Page 115	Page 117
<p>1 Amundsen</p> <p>2 Q. And now we get to the 20th, which is</p> <p>3 the following day, December 20, 2006, as reflected</p> <p>4 in Exhibit 2 for identification. So at most --</p> <p>5 withdrawn.</p> <p>6 Are you aware of any investigation</p> <p>7 that was conducted at NUS on December 20, 2006?</p> <p>8 A. By "investigation" do you mean</p> <p>9 outside contact with the utility company?</p> <p>10 Q. Well, my question to you is: What</p> <p>11 was going on at NUS?</p> <p>12 And if I understand you correctly,</p> <p>13 you are not aware of any internal investigation</p> <p>14 going on at NUS either. You don't know that,</p> <p>15 right?</p> <p>16 MR. GOODMAN: Objection.</p> <p>17 A. Many times the rate analysts confer</p> <p>18 with one another and they meet with Paul and</p> <p>19 discuss that.</p> <p>20 Q. I don't want possibilities. I want</p> <p>21 to know what you know.</p> <p>22 You are the account executive here,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. So you do not know of any</p>	<p>1 Amundsen</p> <p>2 You can testify with personal knowledge about</p> <p>3 other investigations going on internally at NUS</p> <p>4 between November 15th and December 19th, 2006?</p> <p>5 A. Well, I was not privy to what went</p> <p>6 on. So, okay, I cannot.</p> <p>7 Q. And nothing was turned over to the</p> <p>8 rate department by you until December 13, 2006,</p> <p>9 correct?</p> <p>10 MR. GOODMAN: Objection.</p> <p>11 Asked and answered.</p> <p>12 Q. Yes?</p> <p>13 A. Yes.</p> <p>14 Q. And then Mr. Hoffman turns it over</p> <p>15 to Mr. Schnaer on the close of business on the</p> <p>16 19th, correct?</p> <p>17 MR. GOODMAN: Objection.</p> <p>18 Asked and answered.</p> <p>19 A. Yes.</p> <p>20 Q. So is it fair to say that it is your</p> <p>21 understanding that the information contained in</p> <p>22 Exhibit 2 for identification was compiled by</p> <p>23 Mr. Schnaer on December 20, 2006?</p> <p>24 A. Yes.</p> <p>25 Q. Now, what was the purpose of this</p>

32 (Pages 122 to 125)

Page 122	Page 124
<p>1 Amundsen 2 needed to be taken. I don't see how our business 3 could survive if we were just recommencing 4 investigating. 5 Q. Well, let's look at the heading. I 6 assume that the heading "Recommendation" is on the 7 template that you have at NUS; is that right? 8 A. Right. 9 Q. So that's a section of your reports 10 that is the section that contains what it is you 11 are advising the client to do, right? 12 A. Yes. 13 Q. And because your contract is written 14 that way, if the customer implements your 15 recommendation, whether NUS does it or not, the 16 customer owes a fee, right? 17 MR. GOODMAN: Objection. 18 Q. That's your understanding, isn't it? 19 MR. GOODMAN: Objection. 20 A. Yes. 21 Q. Okay. The first sentence under 22 recommendation says, "NUS Consulting Group 23 recommends investigating this potential ongoing 24 overcharge." That's the recommendation, isn't it? 25 A. No. The recommendation is</p>	<p>1 Amundsen 2 A. Correct. 3 Q. And, in fact, the day or the week -- 4 withdrawn. 5 In fact, the week before 6 December 20, 2006 you were still asking the rate 7 department to look at this, right? 8 A. Yes. 9 Q. So at this stage you really didn't 10 know what an investigation would show, right? 11 A. Right. 12 Q. You hadn't investigated yet, right? 13 A. Right. 14 Q. So if Tiffany had opted to 15 investigate itself to look into the overcharge it 16 would be implementing NUS's recommendation, right? 17 A. You mean subsequent to their receipt 18 of our report? 19 Q. Correct. 20 A. Yes. 21 Q. So once Mr. Mogel was in possession 22 of Exhibit 2 for identification, Tiffany was no 23 longer free to investigate itself, correct? 24 MR. GOODMAN: Objection. 25 MR. MITCHELL: Let me rephrase</p>
Page 123	Page 125
<p>1 Amundsen 2 everything that's bolded and underlined in that 3 section. 4 Q. If you read on, Ms. Amundsen, and 5 the rest of it doesn't recommend anything, it just 6 says, "As detailed above, we estimate that in 7 addition to a refund of approximately \$93,000 for 8 past overcharges, a correction of this ongoing 9 overcharge will result in annual savings of 10 approximately \$372,000." 11 That sentence does not recommend any 12 action, does it? 13 A. Yes. It recommends a correction. 14 Q. Well, if there was an investigation 15 that found an error the correction would come 16 automatically, right? 17 A. No, not always. 18 Q. Let's take it step by step. 19 Your testimony is that the 20 recommendation here was not simply to investigate. 21 That's what you say? 22 A. Yes. 23 Q. Okay. The cost analysis report does 24 not identify the cause of the spike in usage at 25 the Manhasset store, correct?</p>	<p>1 Amundsen 2 it. 3 Q. After the receipt of Exhibit 2 for 4 identification, your report, if Tiffany 5 investigated itself and received a refund, NUS to 6 your understanding would claim entitlement to a 7 fee because its recommendation had been 8 implemented, correct? 9 A. Yes. 10 Q. Now, in fact, isn't it true that on 11 November 16, 2006, when Mr. Mogel asked NUS to 12 investigate, that had you simply investigated then 13 and found out what the problem was, you still 14 would have been entitled to a fee? Right? Didn't 15 change anything, the report, did it? 16 MR. GOODMAN: Objection to the 17 form. 18 A. We hadn't formally made our 19 recommendation. 20 Q. Well, Mr. Mogel is the one who asked 21 you to investigate on November 16th, right? 22 A. Right. After we asked him if he 23 could give us a reason for the unusual spike in 24 consumption. 25 Q. Right. He said, "Please</p>

46 (Pages 178 to 181)

Page 178	Page 180
<p>1 Amundsen 2 volunteering it. She made a statement 3 and I was cautioning her and I was 4 instructing her not to make statements 5 regarding what she reviewed with me. 6 And I think she answered your 7 question, but go ahead. Go ahead. If 8 you have more questions about when she 9 read it, then be my guest. 10 MR. MITCHELL: Thank you. 11 Q. This document contains headings 12 "Objective" and "Results." Are those part of the 13 template? 14 A. It's the standard format of all 15 these Report On Client Contact memos. 16 Q. When someone joins NUS, how do they 17 know to use this standard form of memorializing 18 client contacts or creating reports and 19 recommendations to clients? 20 A. They are instructed. 21 Q. By whom? 22 A. Well, whoever trains them how to be 23 a consultant or how to be an account manager. 24 Q. Did anybody ever tell you why you do 25 this, why you follow these standard forms for</p>	<p>1 Amundsen 2 had said, "I agree to pay that amount," you would 3 have reported that in your client contact, right? 4 A. We don't -- It would have been very 5 unusual to -- for the conversation to be like 6 that. 7 Q. Your Report On Client Contact, in 8 fact, says that he questioned the amount. Right? 9 A. Right. 10 Q. So, in fact, he did not agree to it. 11 Right? 12 A. Right. 13 Q. And you indicated in your report 14 that Mr. Mogel did not agree to the shared savings 15 on a going-forward basis, right? 16 A. He asked us, "How is this going to 17 be handled going forward?" He was concerned. 18 Q. Right. And he actually did not 19 indicate agreement to you, right? 20 MR. GOODMAN: Objection. 21 Q. You would have said so if he had, 22 right? 23 MR. GOODMAN: Objection. 24 Asked and answered. 25 A. I said what he said from what I</p>
Page 179	Page 181
<p>1 Amundsen 2 these kinds of things? 3 A. It's company policy. 4 Q. Did anybody ever tell you where the 5 policy came from or where there is such a policy? 6 A. No. 7 Q. Nobody ever told you. Did you ever 8 ask? 9 A. No. 10 Q. Was it done to assist in lawsuits? 11 A. I never asked. 12 Q. Is it your understanding that it's 13 done to help lawsuits? 14 A. It's not my understanding that 15 that's the purpose of this. 16 Q. It's not. 17 A. The purpose of this is to keep an 18 exact record of what happens with the client. 19 Q. In your Report On Client Contact, 20 this document does not say that Mr. Mogel agreed 21 to the payment of the estimated savings amount 22 that was contained in Exhibit 2 for 23 identification, correct? 24 A. Correct. 25 Q. And I assume if he had agreed and he</p>	<p>1 Amundsen 2 recollected. 3 Q. In fact, he says, quote -- 4 Now, you have a sentence in here. 5 "I advised Bruce" -- referring to the onward 6 savings -- "that this was our standard business 7 model. That is, when a billing discrepancy 8 occurred and was corrected, we shared in any 9 refund to which the client was entitled and 10 subsequently billed for shared savings that 11 resulted with correcting the billing discrepancy." 12 You testified earlier that you had 13 never seen at NUS a circumstance where meters had 14 been mistagged, so what was the standard business 15 model that you are referring to here? 16 A. When I referred to standard business 17 model I meant our contract. 18 Q. So you did not know actually as you 19 wrote this memo whether in fact correction of a 20 mistagged meter for another customer constituted a 21 shared savings as a business model, right? You 22 didn't know that? 23 MR. GOODMAN: Objection. 24 A. The business model I was talking 25 about was our contract terms.</p>

48 (Pages 186 to 189)

Page 186

1 Amundsen  
2 confused when you said "close quote."  
3 Q. And you do not say anywhere that he  
4 agreed with you on the shared savings concept,  
5 right?  
6 A. Right.  
7 Q. Now, you note in your memo --  
8 Skimming down a sentence where the  
9 sentence begins "However" you say -- your memo  
10 says, "However, for the time being, he did not  
11 want us to delay contacting the utility suppliers  
12 and getting the problem corrected."  
13 Was it your understanding that he  
14 wanted you at least to get the problem corrected  
15 and "We'll deal with the bill later"?  
16 A. Yes.  
17 Q. "Let's see what the problem is and  
18 then we'll talk about it afterwards." Right?  
19 A. That's -- I wouldn't necessarily  
20 agree to your exact words.  
21 Q. Generally is that it?  
22 A. Let's work on getting the problem  
23 corrected, that was my priority.  
24 Q. And "We'll talk about the bill after  
25 it's corrected," right?

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1 Amundsen  
2 A. Yes.  
3 Q. Yes?  
4 A. Yes.  
5 Q. Now, December 22, 2006 was a Friday.  
6 Do you recall that?  
7 A. I believe it was, yes.  
8 Q. And, in fact, you tried to call LIPA  
9 that day, right?  
10 A. Do you have a record that I did?  
11 Q. Do you recall?  
12 A. I just -- I probably did. I just --  
13 I rely heavily on my own files and records.  
14 Q. Let me show you what has been marked  
15 as Exhibit 10 for identification. This is an  
16 e-mail at 3:29 p.m. on Friday, December 22, 2006  
17 that you sent to Bruce Mogel.  
18 A. Okay. Yes, I confirmed that I  
19 called LIPA on that day.  
20 Q. And they were closed for the  
21 holiday, right?  
22 A. Yes.  
23 Q. So December 22, 2006 was the Friday  
24 before Christmas weekend, right?  
25 A. Yes.

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1 Amundsen  
2 Q. Let me show you what has been  
3 previously marked as Exhibit 7 for identification.  
4 It is a letter dated December 22, 2006. Did you  
5 send that letter on December 22, 2006?  
6 A. Yes.  
7 Q. Did you send it before or after you  
8 made the phone call?  
9 A. I sent it before.  
10 Q. Why --  
11 A. No, excuse me. I'm sorry. I sent  
12 it -- when I couldn't get anyone at LIPA I decided  
13 to fax the letter over.  
14 Q. You didn't even have the name of  
15 someone who was -- who you should talk to on this  
16 account?  
17 A. No, not at that time.  
18 Q. So you just sent a letter to a  
19 P.O. Box at Long Island Power Authority? That's  
20 all you did?  
21 A. I believe I faxed it over to a fax  
22 number I had for LIPA, because it takes too long  
23 through the mail and I wanted to get something  
24 over there.  
25 Q. You are saying it was a fax. I

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1 Amundsen  
2 don't see any indication of a fax there. Do you?  
3 MR. MITCHELL: I don't recall.  
4 Is there any document that was  
5 produced with a fax cover sheet?  
6 MR. GOODMAN: I have no fax  
7 cover sheet.  
8 Q. Is that just --  
9 A. I know how I handle the utility  
10 companies and I don't ordinarily send things  
11 through the mail to them, because at least with a  
12 fax there is some record that it was received.  
13 Q. Well, no record of any sending by  
14 fax or receipt by the power company of this letter  
15 has been produced.  
16 A. Well, maybe the fact that  
17 subsequently there is a response from the utility  
18 shows that they received it.  
19 Q. Well, would you agree with me at  
20 least that sending a letter to LIPA at a P.O. Box  
21 does not indicate any specific, you know,  
22 increased knowledge that NUS was bringing about  
23 how to get this to the attention of the Power  
24 Authority? Would you agree with me?  
25 A. No.



49 (Pages 190 to 193)

Page 190	Page 192
<p>1 Amundsen</p> <p>2 Q. You don't have a person you are</p> <p>3 sending it to, you are just sending it to a</p> <p>4 P.O. Box. Anybody can do that, can't they?</p> <p>5 MR. GOODMAN: Objection.</p> <p>6 A. We are making a specific reference</p> <p>7 to one of the accounts, giving them the account</p> <p>8 number, the meter number, the address. If I</p> <p>9 had -- I'm telling you, maybe we can check fax</p> <p>10 records to see that this was faxed. I don't know</p> <p>11 how far back the records go.</p> <p>12 Q. All right. I presume that you took</p> <p>13 off for Christmas weekend like everyone else.</p> <p>14 A. Yes.</p> <p>15 Q. And you didn't work Christmas Day,</p> <p>16 which was Monday.</p> <p>17 A. Right.</p> <p>18 Q. So Tuesday, December 26th is the</p> <p>19 next business day after your conversation with</p> <p>20 Bruce Mogel that was reflected in your notes,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And on that day you called LIPA and</p> <p>24 spoke with a woman by the name of Cathy</p> <p>25 Schwarting, right?</p>	<p>1 Amundsen</p> <p>2 MR. MITCHELL: Let me have the</p> <p>3 court reporter mark as Exhibit 50 a</p> <p>4 printout that we received from LIPA of</p> <p>5 contacts for information, I guess, on</p> <p>6 the Tiffany and Company account in</p> <p>7 Manhasset. These were produced</p> <p>8 pursuant to subpoena that was</p> <p>9 delivered to LIPA.</p> <p>10 (Exhibit 50, document bearing</p> <p>11 Bates numbers KS11 - KS14, marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q. Ms. Amundsen, I am handing you what</p> <p>14 has been marked as Exhibit 50 for identification.</p> <p>15 I presume you haven't seen this before.</p> <p>16 A. Right.</p> <p>17 Q. Is that correct?</p> <p>18 A. Right.</p> <p>19 Q. I would like to direct your</p> <p>20 attention to the page Bates stamped KS14, which is</p> <p>21 the last page of the document, and there are some</p> <p>22 entries on December 26, 2006.</p> <p>23 A. Yes.</p> <p>24 Q. The first entry reading from the</p> <p>25 bottom up says, "Issued field investigation</p>
Page 191	Page 193
<p>1 Amundsen</p> <p>2 A. Yes.</p> <p>3 Q. When you were on the phone with</p> <p>4 Ms. Schwarting, isn't it true that she pulled up</p> <p>5 the records -- withdrawn.</p> <p>6 After you contacted Ms. Schwarting,</p> <p>7 isn't it true that she told you she pulled up the</p> <p>8 billing records for both Tiffany and Ralph Lauren</p> <p>9 and noted that Tiffany's usage seemed high and</p> <p>10 Polo's seemed low?</p> <p>11 A. I think initially we were looking at</p> <p>12 just Tiffany and then she might have also looked</p> <p>13 at the Polo.</p> <p>14 Q. Didn't she also tell you in that</p> <p>15 phone call that it looked like you might be</p> <p>16 looking at a switched meter situation?</p> <p>17 MR. GOODMAN: Objection.</p> <p>18 A. I don't recall the exact</p> <p>19 conversation. I would have to read my own record</p> <p>20 of it.</p> <p>21 Q. Do you remember discussing with</p> <p>22 Ms. Schwarting the possibility that the meter for</p> <p>23 Tiffany was switched with Polo in that</p> <p>24 conversation on December 26, 2006?</p> <p>25 A. No.</p>	<p>1 Amundsen</p> <p>2 billing does not appear correct since meter</p> <p>3 change. Also checking for possible switched</p> <p>4 meters on 530-72-2225-2. Asking tech services to</p> <p>5 expedite investigation. Contact Christine</p> <p>6 (201)391-4300, extension 109. SPNE" -- which I</p> <p>7 assume is suspend -- "billing until resolved."</p> <p>8 First of all, is that phone number</p> <p>9 listed there your phone number?</p> <p>10 A. Yes.</p> <p>11 Q. So did you give Ms. Schwarting your</p> <p>12 phone number when you spoke with her on the phone?</p> <p>13 A. Yes.</p> <p>14 Q. And that's your extension?</p> <p>15 A. Yes.</p> <p>16 Q. Does that refresh your recollection</p> <p>17 that the subject of the switched meters came up in</p> <p>18 your conversation at that time?</p> <p>19 A. It refreshes my recollection that I</p> <p>20 spoke with Cathy Schwarting and I remember her</p> <p>21 telling me she was going to assign Lisa Quinn to</p> <p>22 handle it.</p> <p>23 Q. You see the next entry above it</p> <p>24 which mentions an L. Quinn?</p> <p>25 A. Yes.</p>



50 (Pages 194 to 197)

Page 194

1 Amundsen  
 2 Q. It says, "Suspend billing:  
 3 Elec:" -- which is standing for electric --  
 4 "Switched MTR" -- which stands for meter --  
 5 "Investigate C/S - Christine: Phone: KAS/RBS and  
 6 L. Quinn." Do you see that?  
 7 A. Yes.  
 8 Q. So does that refresh your  
 9 recollection that the reason Lisa Quinn was being  
 10 assigned was to look into a switched meter  
 11 situation?  
 12 A. I thought the first thing they were  
 13 looking at was the meter multiplier situation, so  
 14 this seems earlier than my recollection of talking  
 15 about a switched meter.  
 16 Q. Obviously we can get Schwarting in  
 17 to talk about this. Do you have any reason to  
 18 dispute that this is accurate?  
 19 A. No.  
 20 Q. The next entry says, "Correct  
 21 possible switched meter with R. Lauren Polo  
 22 account 350-72-2180-8. Asking tech services to  
 23 expedite" -- "tech serv to expedite."  
 24 So there are three entries in LIPA's  
 25 records which reflect the subject of switched

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1 Amundsen  
 2 meters. In looking at that now, does that refresh  
 3 your recollection that Ms. Schwarting had pulled  
 4 up the Polo and Tiffany accounts and told you in  
 5 that conversation it looked like the meters were  
 6 switched?  
 7 A. No. I remember having conversations  
 8 and I seem to recall the gist of the conversation  
 9 was the meter multiplier issue, that the wrong  
 10 multiplier had been applied to the meter.  
 11 MR. MITCHELL: Let me have the  
 12 court reporter mark as Exhibit 51 for  
 13 identification an e-mail from  
 14 Christine Amundsen to Arnold Frankel,  
 15 CC'ing David Brown, Paul Hoffman, Sean  
 16 Graham and Stephen Schnaer, Bates  
 17 stamped NUS88.  
 18 (Exhibit 51, document bearing  
 19 Bates number NUS00088, marked for  
 20 identification, as of this date.)  
 21 Q. Ms. Amundsen, I have handed you what  
 22 has been marked as Exhibit 51 for identification.  
 23 Is that an e-mail that you wrote on December 26,  
 24 2006 at 1:34 p.m.?  
 25 A. Yes.

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1 Amundsen  
 2 Q. That was an e-mail that you sent  
 3 internally at NUS, correct?  
 4 A. Yes.  
 5 Q. And that was an e-mail you sent at  
 6 or around the time of your telephone call with  
 7 Cathy Schwarting of LIPA, correct?  
 8 A. Yes.  
 9 Q. And this memorandum was written on  
 10 the same day as the notes that we looked at that  
 11 are reflected in the LIPA records that are part of  
 12 Exhibit 50 for identification, correct?  
 13 A. Yes.  
 14 Q. Now, why were you writing to Arnold  
 15 Frankel about this?  
 16 A. Because I think Arnold became aware  
 17 of the fact that we were investigating this for  
 18 Tiffany.  
 19 Q. Between Friday the 22nd and Tuesday  
 20 the 26th you became aware?  
 21 A. Yes.  
 22 Q. Who made him aware? Did you tell  
 23 him?  
 24 A. I went to talk to him after I had my  
 25 conversation with Bruce.

Page 197

1 Amundsen  
 2 Q. Isn't it unusual for Mr. Frankel to  
 3 be involved in a resolution of a problem for a  
 4 customer?  
 5 A. No.  
 6 Q. Not unusual at all?  
 7 A. No.  
 8 Q. What was the purpose of your writing  
 9 this e-mail?  
 10 A. To update everyone on what I had  
 11 discussed with LIPA and what LIPA was going to do  
 12 Q. And you say in your e-mail that  
 13 "When I gave her the details of the Tiffany  
 14 account she looked at her screen and then advised  
 15 she would call right back. Subsequently, she  
 16 called and relayed the following:"  
 17 Does that refresh your recollection  
 18 that she pulled up the account for Tiffany on her  
 19 screen?  
 20 A. Yes.  
 21 Q. Does it also refresh your  
 22 recollection, looking at this e-mail, that she  
 23 pulled up the Ralph Lauren account?  
 24 A. Yes.  
 25 Q. So you say under your first bullet,

71 (Pages 278 to 281)

Page 278	Page 280
<p>1 Amundsen</p> <p>2 information and belief, at no time prior to</p> <p>3 receipt of the report was Tiffany aware of the</p> <p>4 overcharges or the ongoing billing error for</p> <p>5 electric service purchases at the Manhasset</p> <p>6 store."</p> <p>7 The report is defined in this</p> <p>8 complaint as the report and recommendation dated</p> <p>9 December 20, 2006. You can see that in</p> <p>10 Paragraph 45. Go back to Paragraph 45. You will</p> <p>11 see the definition of "report."</p> <p>12 A. 45?</p> <p>13 Q. Yes.</p> <p>14 A. (Witness reviewed document.)</p> <p>15 Q. Paragraph 57 is not true. Isn't</p> <p>16 that right?</p> <p>17 A. They were aware that there was a</p> <p>18 spike in the usage.</p> <p>19 Q. Because you told them on</p> <p>20 November 15, 2006, right?</p> <p>21 A. Yes.</p> <p>22 Q. And that was five weeks before</p> <p>23 Tiffany got the report, right?</p> <p>24 A. Yes.</p> <p>25 Q. Now, when you notified Tiffany in</p>	<p>1 Amundsen</p> <p>2 A. He asked me to investigate it.</p> <p>3 Q. Right. So he did take action. As</p> <p>4 soon as you told him, the next day he said,</p> <p>5 "Investigate." Right?</p> <p>6 A. Yes.</p> <p>7 Q. And Paragraph 59 alleges, "Upon</p> <p>8 information and belief, at no time prior to</p> <p>9 receipt of the report was Tiffany aware that its</p> <p>10 electric service meter at the Manhasset store had</p> <p>11 been replaced by LIPA."</p> <p>12 Isn't it true that even you weren't</p> <p>13 aware until the issuance of the report that the</p> <p>14 meter had been changed at the Manhasset store?</p> <p>15 A. Yes.</p> <p>16 Q. Now, Paragraph 54 of the complaint</p> <p>17 alleges "As a result of NUS's efforts as set forth</p> <p>18 above, it obtained refunds for Tiffany totaling</p> <p>19 approximately \$67,021.58 for overcharges on its</p> <p>20 electric service at the Manhasset store."</p> <p>21 Is that true?</p> <p>22 A. Yes.</p> <p>23 Q. Now, putting aside this unique</p> <p>24 situation that you had never seen before in any</p> <p>25 relationship with a NUS customer, can you identify</p>
Page 279	Page 281
<p>1 Amundsen</p> <p>2 November -- on November 15, 2006 about the spike</p> <p>3 in usage, that was the first bill in which a spike</p> <p>4 had occurred, right?</p> <p>5 A. Yes.</p> <p>6 Q. So as soon as NUS became aware of</p> <p>7 the spike you notified Tiffany immediately, right?</p> <p>8 A. We asked them about it, yes.</p> <p>9 Q. And Tiffany as a regular practice</p> <p>10 sent its utility bills to NUS be put on the NUS</p> <p>11 direct system, right?</p> <p>12 A. Yes.</p> <p>13 Q. So on November 16, 2006, Mr. Mogel</p> <p>14 asked you to investigate the overcharge, right?</p> <p>15 A. Yes.</p> <p>16 Q. Paragraph 58 says, "Upon information</p> <p>17 and belief, at no time prior to the receipt of the</p> <p>18 report had Tiffany taken any action to obtain a</p> <p>19 refund of the overcharges for electric service</p> <p>20 purchases or a correction of the electric service</p> <p>21 bills for the Manhasset store to avoid future</p> <p>22 overpays."</p> <p>23 That's not true either, is it?</p> <p>24 Mr. Mogel asked you on November 16, 2006 to</p> <p>25 investigate this for Tiffany, right?</p>	<p>1 Amundsen</p> <p>2 for me what is a more typical circumstance where</p> <p>3 NUS would recover from a customer a percentage of</p> <p>4 a refund and an ongoing savings? What is the most</p> <p>5 typical way that happens?</p> <p>6 A. One of the most typical ways is when</p> <p>7 we identify a spike in a demand where there is a</p> <p>8 clause or provision in the utility company rate</p> <p>9 that should you reach that level, then it's</p> <p>10 ratcheted, and you have -- going forward, they</p> <p>11 would bill you at a higher level for a certain</p> <p>12 period of time.</p> <p>13 So we would identify the problem,</p> <p>14 make the recommendation to investigate it and if</p> <p>15 in fact it was an unusual spike in demand and it</p> <p>16 was an error, then the utility would provide a</p> <p>17 refund and then going forward we would bill the</p> <p>18 client for the ongoing savings.</p> <p>19 Q. What would the ongoing savings there</p> <p>20 be?</p> <p>21 A. It would depend on the amount the</p> <p>22 utility charged per KW. It would depend on how</p> <p>23 high the spike went. It depended on a few</p> <p>24 different things.</p> <p>25 Q. So there would be a change in rate</p>

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NATIONAL UTILITY SERVICE, INC., :

Plaintiff, :

against- :

TIFFANY & CO. and  
TIFFANY AND COMPANY, :

Defendants. :

-----X

DEPOSITION of National Utility Service, Inc.,  
by DAVID M. BROWN, taken by Defendants at the offices  
of Dreier LLP, 499 Park Avenue, New York, New York on  
Wednesday, March 5, 2008, commencing at 10:11 a.m.,  
before Elizabeth Santamaria, a Certified Shorthand  
(Stenotype) Reporter and Notary Public within and for  
the State of New York.

13 (Pages 46 to 49)

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2 of NUS to interface with Tiffany in an issue on

3 the fee as the person who is charged with "primary

4 responsibility in the area of client relations"?

5 A. I believe my boss took an interest

6 in all of this and he decided that he wanted to

7 lead or head those discussions.

8 Q. When did that happen?

9 A. I don't recall it being any kind of

10 a day where he anointed himself as being the

11 person that was going to lead, but three of us

12 went. Arnold attended the meeting as well, and

13 Arnold is my boss.

14 Q. Was that the first time that you

15 heard that Tiffany objected to the savings

16 component of the fee?

17 A. I don't recall.

18 Q. So is it fair to say that the, I'll

19 call it, "client relations" aspect of the dispute

20 between Tiffany and NUS over the savings component

21 of the fee was taken out of your hands by

22 Mr. Frankel?

23 A. No.

24 Q. Did you try to understand before

25 that meeting what Tiffany's objection was?

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1 Brown

2 A. My recollection is that we were not

3 going to that meeting with the intention of

4 discussing a dispute, but rather we were going to

5 this meeting to discuss, you know, everything that

6 had taken place and, you know, just meeting with a

7 client, if you will.

8 Q. You knew going into that meeting

9 that NUS was looking for a fee close to

10 \$1 million, right?

11 A. I knew we were going to that meeting

12 with the understanding that we were going to share

13 in the refund and the savings. I don't know

14 whether or not I put it in the frame, "I'm looking

15 for \$1 million."

16 Q. That's what NUS was looking for,

17 right?

18 A. Yes, I believe in our complaint that

19 is what we are seeking. But your question was

20 what my frame of mind was when I walked into the

21 meeting. I don't recall having that in my mind at

22 that time.

23 Q. So your testimony is that you're

24 going to a meeting in which NUS is looking to

25 justify the amount it's looking to charge its

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1 Brown

2 client and you never thought about how much that

3 actually was? Is that what you are saying?

4 MR. GOODMAN: Objection.

5 A. I did not testify that I am going to

6 this meeting to justify anything. We're going to

7 this meeting to meet with one of our clients.

8 I mean Tiffany was -- you know, was

9 considered a longer tenured client of ours. It

10 was an important client of ours. We were within

11 30 miles of their office, if you will. And Arnold

12 I believe made the decision that we should go in

13 there as the people that worked on this issue and

14 we should, you know, go over it.

15 It was a big ticket item. I could

16 tell you that. And we didn't feel that, you know,

17 it was just -- it just warranted us to stick a

18 bill in the mail and sending it off to them but

19 rather to go in and meet with them and discuss all

20 the things that we had done and how we were going

21 to proceed from this point on. But it wasn't

22 going in there to have a dispute.

23 Q. What research did you do to prepare

24 yourself for that meeting?

25 A. I don't recall.

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1 Brown

2 Q. Were you aware when you went to that

3 meeting that the fee NUS was proposing to charge

4 was -- I'll use the word considerably larger than

5 any fee NUS had ever charged Tiffany throughout

6 the prior 15 years of the parties' relationship?

7 Did you know that?

8 A. I don't recall if I knew it was the

9 largest. It was a large fee. I understood it to

10 be that. I didn't understand it to be the largest

11 fee.

12 Q. Did you -- so you were not aware

13 that there was never a fee that NUS had charged

14 Tiffany that came anywhere close to the size of

15 the fee that NUS was proposing to charge for the

16 circumstances?

17 A. If your question is whether or not I

18 reviewed all the savings past and current at that

19 point, no, I did not.

20 Q. By the time of that meeting, did you

21 know what the billing problem at Manhasset had

22 been that caused NUS to get involved?

23 A. Yes.

24 Q. So all of the investigation into

25 what the problem was had been completed, right?

17 (Pages 62 to 65)

Page 62	Page 61
<p>1 Brown</p> <p>2 Q. And the actual usage amount that</p> <p>3 ultimately became the baseline for the refund was</p> <p>4 consistent with the actual usage amount that</p> <p>5 Tiffany had at the Manhasset store before the</p> <p>6 error occurred, right?</p> <p>7 A. Taking into account seasonal</p> <p>8 variations, yes.</p> <p>9 Q. Now, if we take the usual amount as</p> <p>10 a baseline and the heightened amount, the</p> <p>11 heightened erroneous amount, as the top number,</p> <p>12 the refund of the difference between the</p> <p>13 heightened amount and the baseline amount would</p> <p>14 constitute, if I understand it by NUS's</p> <p>15 allegations in the complaint, the refund component</p> <p>16 of its claim. Is that correct?</p> <p>17 MR. GOODMAN: Objection.</p> <p>18 A. No, not exactly.</p> <p>19 The January bill that was issued by</p> <p>20 LIPA, and Con Ed Solutions had issued one, too,</p> <p>21 was issued but that was an erroneous period, if</p> <p>22 you will. But NUS is not claiming that January</p> <p>23 period as part of the refund period.</p> <p>24 Q. Tiffany didn't pay that bill, right?</p> <p>25 A. No. We instructed them not to pay</p>	<p>1 Brown</p> <p>2 "assumption" is used. The going-forward basis of</p> <p>3 us participating in the savings is as a result of</p> <p>4 the implementation of a recommendation which has</p> <p>5 resulted in the lessening of a charge that Tiffany</p> <p>6 is receiving on a going-forward basis. I don't</p> <p>7 know -- I'm just having difficulty with this word</p> <p>8 "assumption." Our claim is rooted within the</p> <p>9 contract that we have.</p> <p>10 Q. First of all, the contract doesn't</p> <p>11 define in any way, shape or form this</p> <p>12 circumstance. Would you agree with me?</p> <p>13 A. Mistagging of meters?</p> <p>14 Q. Correct.</p> <p>15 A. No, it doesn't.</p> <p>16 Q. And whether in fact the mistagging</p> <p>17 of meters constitutes a savings under the contract</p> <p>18 is not clearly spelled out in your contract,</p> <p>19 correct?</p> <p>20 A. I believe there is an understanding</p> <p>21 in the contract that when you achieve a savings</p> <p>22 for a client wherein they are not paying as much</p> <p>23 on a going-forward basis as a result of the</p> <p>24 implementation of a recommendation that we have</p> <p>25 submitted, we participate in that savings.</p>
Page 63	Page 65
<p>1 Brown</p> <p>2 that bill.</p> <p>3 Q. So the only portion of the claim</p> <p>4 that NUS identifies as the refund portion is the</p> <p>5 difference between what Tiffany paid for</p> <p>6 heightened usage and what it should have paid, had</p> <p>7 it been getting bills for its own usage; is that</p> <p>8 correct?</p> <p>9 A. Right. It's for the period of seven</p> <p>10 bills that Tiffany had received an erroneous bill</p> <p>11 and Tiffany had made payment on those erroneous</p> <p>12 bills. I believe it's seven.</p> <p>13 Q. The savings component of NUS's</p> <p>14 claim, as I understand it, is that NUS is</p> <p>15 operating under an assumption that by obtaining</p> <p>16 the refund for Tiffany, it also achieved for</p> <p>17 Tiffany a going-forward savings. Isn't that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. So the assumption in NUS's claim for</p> <p>21 a savings component of its fee is that Tiffany</p> <p>22 would have paid bills reflecting heightened usage</p> <p>23 at the Manhasset store but for NUS's assistance;</p> <p>24 is that correct?</p> <p>25 A. I don't know if the word</p>	<p>1 Brown</p> <p>2 Q. But whether something constitutes a</p> <p>3 savings or not is the dispute in this case. Isn't</p> <p>4 that what we are fighting over?</p> <p>5 A. I believe that's why we are all here</p> <p>6 today.</p> <p>7 Q. So you would concede to me, would</p> <p>8 you not, that there is nothing expressly written</p> <p>9 in your contract that would say that correcting an</p> <p>10 erroneous mistagging of meters is not only a</p> <p>11 refund, but also a savings? There is nothing</p> <p>12 expressly in the contract.</p> <p>13 A. I will concede to you that the words</p> <p>14 "mistagging of meters" does not exist in the</p> <p>15 agreement.</p> <p>16 Q. So would you also agree with me that</p> <p>17 the word "savings" means that I am providing</p> <p>18 something to you that causes you to pay less than</p> <p>19 you otherwise would be paying?</p> <p>20 A. Your savings is as a result of the</p> <p>21 implementation of our recommendation, which causes</p> <p>22 you to pay less.</p> <p>23 Q. Is it your experience, Mr. Brown,</p> <p>24 that this never would have been caught by anyone?</p> <p>25 I mean, isn't that silly?</p>



19 (Pages 70 to 73)

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2 the scope of our review and if implement it, we

3 get paid on it.

4 Q. I am going to read you Paragraph 1

5 of your contract. It says, "We hereby authorize

6 you to submit recommendations for savings and

7 refunds on our costs of electricity, gas, oil and

8 petroleum products, water, sewage, steam and

9 telecommunications. You will analyze our costs

10 and advise us where refunds and reductions can be

11 obtained."

12 Isn't the intent of this agreement

13 that NUS is looking for utility savings that can

14 be achieved by customers on a going-forward basis

15 by obtaining for them better rates or other

16 efficiencies that will lower their cost for power?

17 Isn't that what this contract is really about?

18 MR. GOODMAN: Objection to the

19 form.

20 A. No.

21 Q. So you believe this contract is

22 about also --

23 Let me rephrase that. Withdrawn.

24 You would concede to me, would you

25 not, that this contract does not assume that

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1 Brown

2 customers are receiving bills for other parties'

3 usage, right?

4 MR. GOODMAN: Objection.

5 Calls for a legal conclusion.

6 A. This contract does take that into

7 consideration because it's our cost.

8 Anything that reflects their cost of

9 the commodities that you have described that

10 result in them making overpayments that are

11 eliminated or reduced or what have you, but as a

12 result of implementing our recommendation, is

13 subject to our participation under this agreement.

14 Q. If there is a refund you participate

15 in the refund, right?

16 A. If there is a one-time refund, if

17 there is a defined period of time wherein an error

18 occurred and did not occur on a going-forward

19 basis and we are able to secure a refund or a

20 credit for a client, we would participate in that

21 refund.

22 Q. So the key is did not occur on a

23 going-forward basis? Is that the key?

24 A. It's what is collected back as far

25 as any erroneous payments are made, as well as any

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1 Brown

2 forward payments.

3 Q. You used a reduction in costs on a

4 going-forward basis. That was I think what you

5 said, right?

6 A. That would be a savings, yes.

7 Q. Fine.

8 I know you want to take a break.

9 Give me two seconds here.

10 You understand that NUS identified

11 to Tiffany the spike in usage on the first bill,

12 right?

13 A. I believe we also identified there

14 were other periods of time in the report that they

15 were overpaying on their charges.

16 Q. Please. I know you want to say what

17 you want to say, but I am going to persist.

18 A. You are limiting -- the report --

19 Q. The first notification from NUS came

20 after NUS saw the first bill with the spike.

21 Isn't that right?

22 A. I believe, yes. Christine had --

23 Bianco had noticed the spike,

24 communicated that to Christine Amundsen, who

25 inquired with Bruce Mogel as to this potential

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1 Brown

2 spike in November of 2006.

3 Q. And the following day Bruce Mogel

4 asked Christine Amundsen to investigate. You know

5 that, right? You saw the e-mail?

6 A. I believe, yes.

7 Q. So it was at the time Mr. Mogel

8 asked Christine to investigate a one-time event,

9 right?

10 A. No.

11 Q. It only became a one-time -- it only

12 became a multi-time event because NUS did not

13 immediately investigate.

14 A. No.

15 MR. MITCHELL: All right. We

16 can take a break.

17 (Recess taken.)

18 Q. Would you please, Mr. Brown, would

19 you take a look at Exhibits 4 and 5 for

20 identification.

21 Mr. Brown, I have handed you what

22 has been marked as Exhibits 4 and 5 for

23 identification. Those are e-mails in which you

24 are not shown as a recipient but they have been

25 marked previously at other depositions.

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<p>1 Brown</p> <p>2 services that were provided by NUS under that</p> <p>3 agreement, right?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. So putting aside whether this</p> <p>6 particular investigation falls under the agreement</p> <p>7 itself, at a minimum Tiffany was a paying customer</p> <p>8 of NUS for some services during the period of</p> <p>9 time, November 16, 2006 forward. Right?</p> <p>10 A. Yes.</p> <p>11 Q. So as a customer of NUS, it asks its</p> <p>12 utility consultant to investigate the problem</p> <p>13 immediately, right?</p> <p>14 MR. GOODMAN: Objection.</p> <p>15 Q. Investigate. Investigate the</p> <p>16 unusual usage pattern immediately.</p> <p>17 MR. GOODMAN: Objection.</p> <p>18 Q. Right?</p> <p>19 A. No.</p> <p>20 Q. The next day?</p> <p>21 MR. GOODMAN: Objection.</p> <p>22 A. Mr. Mogel did not use the word</p> <p>23 "immediate" or "immediately." He said, "Please</p> <p>24 investigate LIPA involvement." You are</p> <p>25 mischaracterizing what Mr. Mogel had written back.</p>	<p>1 Brown</p> <p>2 that there was no unusual usage pattern or there</p> <p>3 was no activity at the store that would account</p> <p>4 for an unusual usage pattern. Right?</p> <p>5 A. Yes.</p> <p>6 Q. So I assume you would at least agree</p> <p>7 with me that he did not sit on this for a long</p> <p>8 period of time, right? Mr. Mogel.</p> <p>9 A. I will agree that he responded the</p> <p>10 next day at 1:01 in the afternoon.</p> <p>11 Q. Right. And he asked NUS to do</p> <p>12 something. He asked a -- a customer asked NUS to</p> <p>13 do something the next day, right?</p> <p>14 MR. GOODMAN: Objection.</p> <p>15 MR. MITCHELL: I will rephrase</p> <p>16 the question.</p> <p>17 Q. The next day when he gets back to</p> <p>18 NUS, your customer asked your company to do</p> <p>19 something, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you didn't do it right away, did</p> <p>22 you?</p> <p>23 A. Right away?</p> <p>24 Q. Well, anywhere close to as quickly</p> <p>25 as Mr. Mogel got back to Ms. Amundsen with a</p>
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<p>1 Brown</p> <p>2 Q. I'm sorry, Mr. Brown, but I see an</p> <p>3 e-mail from Ms. Amundsen at 4:28 p.m. on Wednesday</p> <p>4 November 15, 2006, advising of the "unusual usage</p> <p>5 pattern" and asking whether there was anything</p> <p>6 going on at the store that might account for the</p> <p>7 "unusual usage pattern." Right?</p> <p>8 A. Sure.</p> <p>9 Q. Mr. Mogel, Exhibit 5 shows that he</p> <p>10 received that e-mail. It was sent by Ms. Amundsen</p> <p>11 at 4:28 p.m. At 4:34 p.m., Mr. Mogel is</p> <p>12 canvassing people internally at Tiffany to see</p> <p>13 whether they can answer Ms. Amundsen's question</p> <p>14 about whether there was anything unusual going on</p> <p>15 in the store. Right?</p> <p>16 A. It appears that he did reach out to</p> <p>17 other people within Tiffany regarding Christine's</p> <p>18 e-mail, yes.</p> <p>19 Q. Within minutes, right?</p> <p>20 A. Yes, within minutes. And it does</p> <p>21 cover into the next day as well, the next morning.</p> <p>22 Q. And by 1:01 p.m. he's responding to</p> <p>23 Ms. Amundsen that she should investigate the</p> <p>24 involvement and forwarding to her all of the</p> <p>25 responses from the people he canvassed to show</p>	<p>1 Brown</p> <p>2 response.</p> <p>3 A. Your question is assuming</p> <p>4 Mr. Mogel's querying of other people within</p> <p>5 Tiffany is equal to what Christine needed to do</p> <p>6 thereafter.</p> <p>7 Q. The recommendation that NUS</p> <p>8 ultimately makes to Tiffany on December 20, 2006</p> <p>9 has a recommendation that the first thing that NUS</p> <p>10 will do is contact the utility, right?</p> <p>11 A. Without having the document in front</p> <p>12 of me, I believe yes, that is what is said.</p> <p>13 Q. And Ms. Amundsen testified --</p> <p>14 withdrawn.</p> <p>15 Ms. Amundsen is a direct report to</p> <p>16 you, right?</p> <p>17 A. Yes.</p> <p>18 Q. So her day-to-day activities are</p> <p>19 managed by you, right?</p> <p>20 MR. GOODMAN: Objection.</p> <p>21 A. Not her day-to-day activities. I</p> <p>22 mean I'm not reviewing every minute of her day,</p> <p>23 but she is a direct report to me.</p> <p>24 Q. And she testified that you have</p> <p>25 weekly meetings with the consultants in your</p>

26 (Pages 98 to 101)

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<p>1 Brown</p> <p>2 remember about these internal discussions.</p> <p>3 A. The one that I do remember was when</p> <p>4 LIPA came back and told us that the problem</p> <p>5 existed as a result of a meter multiplier, and I</p> <p>6 remember reviewing the bills with Christine and I</p> <p>7 believe also Paul Hofmann and I was coming or we</p> <p>8 were coming to the conclusion that the corrective</p> <p>9 action that they were suggesting was a</p> <p>10 misdiagnosis, if I were to use my earlier</p> <p>11 testimony. I don't think I used the word</p> <p>12 "misdiagnosis" during the meeting, but it</p> <p>13 didn't -- it didn't seem right. It wasn't right.</p> <p>14 It just wasn't adding up.</p> <p>15 Q. And how did you get involved in</p> <p>16 those discussions? Do you recall?</p> <p>17 A. I don't recall specifically how I</p> <p>18 became involved in those discussions, no.</p> <p>19 Q. Did Ms. Amundsen or Mr. Hofmann</p> <p>20 bring you into the discussion to get another set</p> <p>21 of eyes on the papers or was it something else?</p> <p>22 A. Again, I don't recall. I may have</p> <p>23 approached them, they may have approached me. I</p> <p>24 don't know.</p> <p>25 Q. Well, if you approached them</p>	<p>1 Brown</p> <p>2 problem on a day-to-day basis, right?</p> <p>3 A. I don't recall. I may have been</p> <p>4 dealing with it on a day-to-day --</p> <p>5 Look, this is an area of my</p> <p>6 responsibility and I may have wanted to be updated</p> <p>7 on a day-to-day basis on this. I may have kept in</p> <p>8 touch on it. I just don't recall how many times I</p> <p>9 dealt with it or when the first time I became</p> <p>10 aware of it.</p> <p>11 Q. "May have been involved" doesn't say</p> <p>12 whether you were. Is your answer when you say you</p> <p>13 may have been involved you don't remember?</p> <p>14 A. I was involved in this.</p> <p>15 Q. So I want to know everything --</p> <p>16 We already talked about the dealings</p> <p>17 with Larry from Albertson's when Christine was</p> <p>18 out. Other than that, you said that you also</p> <p>19 recall a meeting and conversation with</p> <p>20 Ms. Amundsen and Mr. Hofmann looking at the</p> <p>21 changed multiplier and concluding that that was</p> <p>22 not the resolution of the problem, right?</p> <p>23 A. No. We were looking at the</p> <p>24 explanation that LIPA was putting forth as the</p> <p>25 problem and I remember looking at the bills with</p>
Page 99	Page 101
<p>1 Brown</p> <p>2 wouldn't that assume that you knew something about</p> <p>3 it before then?</p> <p>4 A. And as I testified, I mean I do -- I</p> <p>5 don't remember the first time that I became</p> <p>6 involved in it but I do remember this one meeting.</p> <p>7 So, yes, it would presuppose that I knew about it</p> <p>8 before. Or I may not have and then just brought</p> <p>9 it to --</p> <p>10 No, I did know about it before. I</p> <p>11 just don't know when.</p> <p>12 Q. So what is the first thing you</p> <p>13 remember having learned about this?</p> <p>14 A. I don't recall.</p> <p>15 Q. You were not someone throughout most</p> <p>16 of this period who was dealing directly with this</p> <p>17 problem, right?</p> <p>18 A. I was dealing directly with this</p> <p>19 problem for a period of time, yes.</p> <p>20 Q. We went through that already. The</p> <p>21 period of time where Ms. Amundsen was sick and you</p> <p>22 stepped in for those few days, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Other than that, you were not</p> <p>25 dealing with the problem and the resolution of the</p>	<p>1 Brown</p> <p>2 Ms. Amundsen and Mr. Hofmann. As I testified</p> <p>3 before, I have a rate background or I have worked</p> <p>4 with utility bills quite extensively within the</p> <p>5 company.</p> <p>6 Q. So other than those two</p> <p>7 circumstances, what else do you remember</p> <p>8 specifically doing in connection with the</p> <p>9 Manhasset problem that Tiffany had?</p> <p>10 A. I remember directing Christine</p> <p>11 that -- after we looked at all of this is -- I</p> <p>12 asked her to reach out to Tiffany to see whether</p> <p>13 or not they had any kind of a connected load study</p> <p>14 or connected load plan for the Manhasset store</p> <p>15 that may explain the load profile or the load at</p> <p>16 the store. The explanation that was being</p> <p>17 provided from LIPA was only addressing the</p> <p>18 specific amount of the usage. It wasn't</p> <p>19 explaining the demand.</p> <p>20 Q. So other than that, now we have</p> <p>21 three things. Anything else that you remember</p> <p>22 specifically?</p> <p>23 A. Outside of my conversations when</p> <p>24 Christine was taken sick?</p> <p>25 Q. You have now identified three: The</p>

32 (Pages 122 to 125)

Page 122	Page 124
<p>1 Brown</p> <p>2 looking for?</p> <p>3 A. Here we go.</p> <p>4 No.</p> <p>5 Q. "No" what?</p> <p>6 A. "No" to your question.</p> <p>7 Q. Why is it "No"?</p> <p>8 A. It wouldn't have been the first time</p> <p>9 that she was acting on the comment that she had</p> <p>10 received back from Mr. Mogel.</p> <p>11 Q. Because she had tried to reach them</p> <p>12 on Friday, the 22nd? Is that why you are saying</p> <p>13 that?</p> <p>14 A. No.</p> <p>15 Q. What was the reason?</p> <p>16 MR. GOODMAN: I think he might</p> <p>17 have misheard the question. I think</p> <p>18 he is confused.</p> <p>19 Q. The suggested action in the cost</p> <p>20 analysis report is "We will initially approach the</p> <p>21 provider to review this matter and correct your</p> <p>22 billings." That was going to be the first thing.</p> <p>23 We went through that before.</p> <p>24 Do you recall that?</p> <p>25 A. Yes, that I recall.</p>	<p>1 Brown</p> <p>2 at some point, so that it was not -- you were not</p> <p>3 the primary person responsible for the client</p> <p>4 relationship. Do you remember that?</p> <p>5 A. I don't recall those exact words</p> <p>6 being expressed but I do recall Arnold was</p> <p>7 involved in this matter, yes.</p> <p>8 Q. This e-mail is to Mr. Frankel</p> <p>9 telling him that NUS had spoken with the billing</p> <p>10 supervisor at LIPA. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Why would something like that be</p> <p>13 sent to Mr. Frankel?</p> <p>14 A. You have to ask Mr. Frankel. But --</p> <p>15 I'm not going to assume anything.</p> <p>16 Arnold is the general manager within the office.</p> <p>17 Again, I don't know why Christine would have sent</p> <p>18 this to Arnold Frankel.</p> <p>19 Q. Did you ever ask her?</p> <p>20 A. No.</p> <p>21 Q. Did you ever tell her that "You'd</p> <p>22 better send this stuff to Arnold and keep him</p> <p>23 involved in the Tiffany matter"?</p> <p>24 A. No.</p> <p>25 Q. She was a direct report to you,</p>
Page 123	Page 125
<p>1 Brown</p> <p>2 Q. Okay, good.</p> <p>3 So Ms. Amundsen tried to speak with</p> <p>4 someone at LIPA on Friday, December 22nd, in the</p> <p>5 afternoon but they had left early for the holiday.</p> <p>6 Do you recall that?</p> <p>7 A. Yes.</p> <p>8 Q. So the first substantive day of</p> <p>9 communication with LIPA would be Tuesday,</p> <p>10 December 26, 2006, correct?</p> <p>11 A. Correct.</p> <p>12 Q. That's the day she first spoke with</p> <p>13 Ms. Schwarting, right?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. And this e-mail in which you are</p> <p>16 CC'd is also dated December 26, 2006 at</p> <p>17 10:46 a.m., right?</p> <p>18 A. Correct.</p> <p>19 Q. So on the Tuesday after Christmas</p> <p>20 weekend at 10:46 a.m. you are now being copied on</p> <p>21 an e-mail that Ms. Amundsen is sending to</p> <p>22 Mr. Frankel, right?</p> <p>23 A. Yes.</p> <p>24 Q. You said earlier that Mr. Frankel</p> <p>25 became personally involved in the Tiffany matter</p>	<p>1 Brown</p> <p>2 right?</p> <p>3 A. As she is currently, yes.</p> <p>4 Q. And you do not know, as you sit here</p> <p>5 today, why she would send this kind of</p> <p>6 communication to Mr. Frankel on the first</p> <p>7 substantive communication she was having with LIPA</p> <p>8 about the Tiffany matter?</p> <p>9 A. No. She's free to send an e-mail to</p> <p>10 whomever she wants within the company.</p> <p>11 Q. You are CC'd on this, too. This is</p> <p>12 the first time I see your name on any e-mail as</p> <p>13 well. Do you see that?</p> <p>14 A. I see that I am copied on this.</p> <p>15 MR. GOODMAN: Objection.</p> <p>16 Q. I am unaware of an earlier</p> <p>17 communication involving the Manhasset billing</p> <p>18 issue, which shows you as receiving an e-mail.</p> <p>19 Are you aware of anything earlier than this?</p> <p>20 A. I don't recall.</p> <p>21 Q. Why were you CC'd on this?</p> <p>22 A. Probably because, you know,</p> <p>23 Christine reports to me and she wanted to keep me</p> <p>24 in the loop.</p> <p>25 Q. Well, you don't have a specific</p>



33 (Pages 126 to 129)

Page 126	Page 128
<p>1 Brown</p> <p>2 recollection of being involved in creating the</p> <p>3 cost analysis report, but then by the following</p> <p>4 Tuesday you're in the loop on something that you</p> <p>5 have no recollection of having been in the loop on</p> <p>6 before. Can you explain that at all?</p> <p>7 A. I don't think there is a need to</p> <p>8 explain. I mean she was a direct report of mine.</p> <p>9 I believe I testified that I was aware of this. I</p> <p>10 don't know when I specifically was aware and I</p> <p>11 also testified that I may have been involved in</p> <p>12 the creation of the report. I just don't have a</p> <p>13 recollection of it, but -</p> <p>14 Q. But you are doing the best you can</p> <p>15 to give me your complete knowledge today of</p> <p>16 everything you remember.</p> <p>17 A. I'm doing the best I can to tell you</p> <p>18 the truth.</p> <p>19 Q. And to give me the benefit of</p> <p>20 everything you can honestly remember as you are</p> <p>21 sitting here today, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And as you are sitting here today,</p> <p>24 you have no recollection of why Ms. Amundsen was</p> <p>25 reporting to Mr. Frankel about her first</p>	<p>1 Brown</p> <p>2 account as it occurs."</p> <p>3 Q. Let me show you what has been</p> <p>4 previously marked as Exhibit 51 for</p> <p>5 identification. It's an e-mail also from</p> <p>6 December 26, 2006, but at 1:34 in the afternoon.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. That's an e-mail that you also</p> <p>10 received a CC of, right?</p> <p>11 A. Yes.</p> <p>12 Q. And that's an e-mail from</p> <p>13 Ms. Amundsen to Mr. Frankel providing more</p> <p>14 information about what she learned in her</p> <p>15 conversation with Ms. Schwarting, right?</p> <p>16 A. Yes.</p> <p>17 Q. Now, and you were -</p> <p>18 Do you have any explanation of why</p> <p>19 so many people are in the loop on this situation?</p> <p>20 MR. GOODMAN: Objection.</p> <p>21 MR. MITCHELL: I will rephrase</p> <p>22 it.</p> <p>23 Q. Do you have any reason why so many</p> <p>24 people are being provided with detailed</p> <p>25 information from Ms. Amundsen about what she was</p>
Page 127	Page 129
<p>1 Brown</p> <p>2 communication with LIPA concerning the Manhasset</p> <p>3 store, right?</p> <p>4 A. I don't know why she sent it to</p> <p>5 Arnold. I don't see anything unusual in her sending</p> <p>6 it to Arnold either.</p> <p>7 Q. Did you ever discuss with Arnold</p> <p>8 Frankel that he told her, "I want you to keep me</p> <p>9 fully informed of everything you do for Tiffany in</p> <p>10 Manhasset"?</p> <p>11 A. I don't recall that discussion.</p> <p>12 Q. Did you ever have any discussion</p> <p>13 with Mr. Frankel about him wanting to be</p> <p>14 personally involved in the resolution of the</p> <p>15 Tiffany billing issue at Manhasset?</p> <p>16 A. I recall that Arnold wanted to</p> <p>17 attend the meeting in late January, early</p> <p>18 February. I think it was late January of '07,</p> <p>19 that he wanted to attend that meeting. I think</p> <p>20 there was some suggestion that it was just going</p> <p>21 to be Chris and I to go and Arnold said, "No, I</p> <p>22 would like to go as well." He wanted to come</p> <p>23 along.</p> <p>24 But I don't recall Arnold saying,</p> <p>25 you know, "I want to know every moment of this</p>	<p>1 Brown</p> <p>2 doing with LIPA in connection with the Tiffany</p> <p>3 store in Manhasset?</p> <p>4 A. I wouldn't classify this as being so</p> <p>5 many people. I mean there are five people. There</p> <p>6 is Arnold, there is myself, Paul Hofmann and Steve</p> <p>7 Schnaer. I wouldn't characterize this as being so</p> <p>8 many people or unusual in any way.</p> <p>9 Q. Well, we have Mr. Frankel as the</p> <p>10 person to whom this information is being sent. He</p> <p>11 is the executive vice president, it says on your</p> <p>12 website, "with primary responsibility for the</p> <p>13 general management of the United States</p> <p>14 operations."</p> <p>15 A. Correct.</p> <p>16 Q. Right?</p> <p>17 A. Correct.</p> <p>18 Q. Other than the Soutanians</p> <p>19 themselves, he is the highest officer in the</p> <p>20 company, right?</p> <p>21 A. No.</p> <p>22 Q. The Soutanians are both</p> <p>23 co-presidents, right?</p> <p>24 A. Right.</p> <p>25 Q. And he is the only executive vice</p>



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<p>1 Brown</p> <p>2 Q. So you walked out of the meeting and</p> <p>3 dismissed what Mr. Palfini was saying out of hand.</p> <p>4 Is that it?</p> <p>5 A. I remember walking out of the</p> <p>6 meeting feeling that, you know, we were at a</p> <p>7 difference of opinion as to the application of our</p> <p>8 agreement.</p> <p>9 Q. And it was your opinion that the</p> <p>10 "correction of the ongoing billing error" should</p> <p>11 result in NUS being paid a fee equal to 50 percent</p> <p>12 of the amount of that billing error brought out</p> <p>13 for a period of 60 months by a formula using</p> <p>14 60 months, correct?</p> <p>15 MR. GOODMAN: Objection.</p> <p>16 Q. Let me rephrase that. That was</p> <p>17 inartful.</p> <p>18 Your contract requires in</p> <p>19 circumstances where there is a refund a payment of</p> <p>20 a fee to NUS of 50 percent of the refund, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And if there is a savings, a payment</p> <p>23 of 50 percent of the savings calculated over a</p> <p>24 60-month period, correct?</p> <p>25 A. Yeah. Those two components can</p>	<p>1 Brown</p> <p>2 There is testimony in the record</p> <p>3 that there were circumstances where rates went</p> <p>4 back up after they had been reduced and NUS did</p> <p>5 not recover a full 60 months of reduced fees. Is</p> <p>6 it your practice at NUS to collect 60 months of</p> <p>7 fees on a going-forward basis even if the rate</p> <p>8 does not remain reduced for the full 60 months?</p> <p>9 A. No.</p> <p>10 Q. What is your practice in that</p> <p>11 circumstance?</p> <p>12 A. If the result of the recommendation</p> <p>13 that is implemented goes away, we would not</p> <p>14 continue to participate in the savings.</p> <p>15 Q. So if I understand your answer</p> <p>16 correctly, you look at what actually happens</p> <p>17 during that 60-month period in determining whether</p> <p>18 the entirety of the 60-month period is paid as a</p> <p>19 fee, 50 percent of that savings as a fee, right?</p> <p>20 A. The savings is reviewed on the</p> <p>21 period in which billing would be issued, in most</p> <p>22 cases on a monthly basis.</p> <p>23 Q. Isn't it fair to say that in the</p> <p>24 circumstance of NUS's claim in this case to</p> <p>25 50 percent of the item identified as "savings" in</p>
Page 167	Page 169
<p>1 Brown</p> <p>2 exist within the agreement, yes.</p> <p>3 Q. The savings component would</p> <p>4 contemplate a fee to NUS based upon an assumption</p> <p>5 that the client will realize the benefit of the</p> <p>6 savings for a 60-month period and, therefore,</p> <p>7 shares half of that amount with NUS as a fee.</p> <p>8 Correct?</p> <p>9 A. As I testified before, I don't</p> <p>10 consider it to be based upon an assumption. I</p> <p>11 base it upon the fact that a correction is made</p> <p>12 and on a forward basis, if you will, they are not</p> <p>13 paying the ongoing billing error and as a result</p> <p>14 that would constitute a savings under the</p> <p>15 agreement.</p> <p>16 Q. What happens in a circumstance where</p> <p>17 you negotiate a reduced rate for a customer and</p> <p>18 the rate only remains reduced for a period of</p> <p>19 12 months and then goes back up after 12 months?</p> <p>20 How much is NUS paid as a fee in that</p> <p>21 circumstance?</p> <p>22 MR. GOODMAN: Objection.</p> <p>23 A. Are we speaking entirely under a</p> <p>24 contingency arrangement?</p> <p>25 Q. Under the contract that Tiffany has.</p>	<p>1 Brown</p> <p>2 Paragraph 61 of the complaint, that the assumption</p> <p>3 is that this billing error would not have been</p> <p>4 discovered for 60 months?</p> <p>5 A. No. It assumes that the conditions</p> <p>6 that measure a savings is still in existence</p> <p>7 during that month period and whether or not during</p> <p>8 the specific 60 months --</p> <p>9 To give you an example is to give</p> <p>10 you if all of a sudden a year down the line LIPA</p> <p>11 mistags these meters again and result in Tiffany's</p> <p>12 increase in their bill as a result, let's say that</p> <p>13 happens during month 36, we wouldn't participate</p> <p>14 any more because they are paying based upon Polo's</p> <p>15 usages or the usage as recorded by that particular</p> <p>16 meter.</p> <p>17 Q. But in making a claim for a fee</p> <p>18 based on 60 months of projected savings as a</p> <p>19 result of correcting the mistagged meters here</p> <p>20 there is no opportunity, because of the fact that</p> <p>21 now the meter was corrected, to ever know when in</p> <p>22 fact either Polo or Tiffany would have discovered</p> <p>23 the error if NUS hadn't identified it right away</p> <p>24 first. Right?</p> <p>25 A. Our participation in a savings is</p>

Page 1

UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NATIONAL UTILITY SERVICE, INC.,

Plaintiff,

-against- Case No:07CV3345 (RJS) (GWG)

TIFFANY & CO. and TIFFANY and COMPANY,

Defendants.

-----X

488 Madison Avenue  
New York, New York

June 19, 2008  
2:00 p.m.

DEPOSITION of DAVID M. BROWN,

an Expert Witness herein, taken by the Defendants,  
pursuant to Article 31 of the Civil Practice Law &  
Rules of Testimony, and Notice, held at the  
above-mentioned time and place, before SARA FREUND,  
a shorthand reporter and a Notary Public of the  
State of New York.

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1 D.M. Brown

2 Q. Would you describe to me how that amount

3 is calculated? What did you do to come up with

4 that number that that amount is due NUS for that

5 period?

6 A. It's 50 percent of the gross savings for

7 that particular month, which would have been

8 \$23,536.33.

9 Q. How did you calculated the gross savings

10 of \$23,536.33?

11 A. What was first done was taking the Polo

12 meter readings, and then taking those meter

13 readings and recalculating it off a meter

14 multiplier of 180 to come up with what Tiffany

15 would have been billed both in a consumption and

16 demand as a result of those meter multipliers.

17 Q. Are you saying for Polo's usage?

18 A. It's not Polo's usage, it's Tiffany's

19 usage. It's Polo's meter readings. And these

20 meter readings are placed against the Tiffany meter

21 multiplier of 180 which was in effect during the

22 affected period, if you will, in late 2006. And in

23 that, we come up with the KWH, which is the

24 consumption, and we also come up with the KW both

25 on, off and mid-peak. Taking that information

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1 D.M. Brown

2 then, and applying it to the Tiffany rate of 285

3 with LIPA and calculating against that rate, and

4 also taking it against the Con Ed Solution charges

5 to come up with the commodity portion of that, you

6 come up with the former billing, if you will, as to

7 what they would have paid had the NUS

8 recommendations not have been implemented. The

9 second page of the bill demonstrates how they are

10 presently being billed by both LIPA and Con Ed

11 Solutions. And then taking that total, you put it

12 to the first page, which is the present, and the

13 difference between the total former charges and the

14 present charges would give you the net savings of

15 \$23,536.33 for which one-half of that would be due

16 NUS.

17 Q. Circle for me, if you would, everything

18 on that page that's a Polo amount. I gave you my

19 pen. On the page Bates stamped 887, what I would

20 like you to do is, circle for me all of the

21 readings on here that relate to the usage of Polo

22 Ralph Lauren. Write next to that "RL," if you

23 would.

24 A. This is Ralph Lauren Polo.

25 Q. Is there any place else on that bill

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1 D.M. Brown

2 that reflects readings that have to do with Polo

3 Ralph Lauren, anything else on that page or the

4 page Bates stamped 888?

5 A. I believe your first question and your

6 question now are a little bit different. Are you

7 saying having something to do with --

8 Q. Let me rephrase it.

9 Are there any other places on this bill

10 where usage of Polo Ralph Lauren is reflected?

11 A. No.

12 Q. Is there any other place on these two

13 pages, Bates stamped 887 and 888, that reflect

14 numbers that are attributable to Ralph Lauren as

15 opposed to Tiffany?

16 A. All of these numbers here would have

17 been the Tiffany charges that were borne out of the

18 Ralph Lauren readings.

19 Q. So the portion of the page beneath

20 "former billing rate 285" is the amount that NUS

21 --withdrawn.

22 If I understand you correctly, the first

23 page purports to create a bill for Tiffany based

24 upon the Ralph Lauren usage that you circled, is

25 that correct?

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1 D.M. Brown

2 A. Yes. It's based upon what would have

3 been charged to Tiffany had the NUS recommendations

4 not been implemented.

5 Q. You keep saying "had the NUS." You're

6 an expert now. You're not testifying as a fact

7 witness. You don't know -- as an expert witness

8 you're here testifying in a different capacity, you

9 understand that?

10 A. Yes.

11 Q. Had the NUS recommendations not been

12 implemented is NUS's claim in the case. You

13 understand that?

14 A. Yes.

15 Q. You're not testifying here as an

16 advocate today. I'm here to get your testimony as

17 an expert. You understand the distinction?

18 A. Yes.

19 MR. GOODMAN: Objection.

20 Q. Mr. Brown, the entire first page Bates

21 stamped NUS 887, purports to create a bill in such

22 a way that had Tiffany continued to receive charges

23 for Polo Ralph Lauren's usage, it's NUS's position

24 that this is the amount that that bill would have

25 been; is that right?

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NATIONAL UTILITY SERVICE VS TIFFANY & CO

BRUCE EDSON - 2/27/08

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CONCORDANCE AND CONDENSED TRANSCRIPT  
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BRUCE EDSON - 2/27/08

VS TIFFANY &amp; CO

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(1)  
 (2) Q. Did you send e-mails relating to  
 (3) that line item expense?  
 (4) A. To the line item expense, no.  
 (5) Q. My questions now refer specifically  
 (6) to the line item expense that was brought to  
 (7) your attention by Brian in October of 2006.  
 (8) A. I understand.  
 (9) Q. So, you did not send e-mails  
 (10) relating to that line item expense, is that  
 (11) right?  
 (12) A. Yes.  
 (13) Q. Yes, that's correct?  
 (14) A. Yes, I did not send or have any  
 (15) conversation relative to that line item with  
 (16) anybody at Tiffany & Company.  
 (17) Q. Okay. Did you receive any e-mails  
 (18) from Brian with respect to that line item  
 (19) expense?  
 (20) A. No.  
 (21) Q. Did Brian tell you whether or not  
 (22) he had spoken with anyone at Tiffany about that  
 (23) line item expense?  
 (24) A. No.  
 (25) Q. Are you aware of Brian having taken

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(1)  
 (2) any action with respect to that line item  
 (3) expense?  
 (4) A. I am not aware.  
 (5) Q. And when was the next conversation  
 (6) you had with Brian where he told you that, in  
 (7) fact, that line item expense related to the  
 (8) electric service?  
 (9) A. I don't know.  
 (10) Q. When did you learn that the meters  
 (11) for electric service had been replaced?  
 (12) A. Through this e-mail that you just  
 (13) asked me to look at, the one that states that  
 (14) the meter had been replaced. So I guess that  
 (15) would be the one that - dated January 11, 2007  
 (16) at 4:08.  
 (17) Q. That's from Christine Amundsen to  
 (18) Bruce Mogel and Anthony Zalanti?  
 (19) A. Yes.  
 (20) Q. And in that e-mail she asks also,  
 (21) "Do you know the reason why LIPA was changing  
 (22) the meter last September."  
 (23) A. Yes.  
 (24) Q. That's when you first learned that  
 (25) the meters had been changed?

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(1)  
 (2) A. Yes.  
 (3) Q. Was the second conversation you had  
 (4) with Brian relating to the reason for the line  
 (5) item expense around the same time as this  
 (6) e-mail?  
 (7) MR. MITCHELL: Can I have that  
 (8) question again, please?  
 (9) (Record read.) -  
 (10) MR. GOODMAN: Let me clean that up  
 (11) and I'll restate it.  
 (12) Q. Do you recall the second  
 (13) conversation that you described that you had  
 (14) with Brian?  
 (15) A. Yes.  
 (16) Q. Okay. And in that conversation you  
 (17) talked about or he told you about the reason  
 (18) for the line item expense?  
 (19) A. Yes.  
 (20) Q. Okay. Did that conversation take  
 (21) place around the time of Christine's e-mail on  
 (22) January 11, 2007?  
 (23) A. No.  
 (24) Q. Was it before or after?  
 (25) A. Before.

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(1)  
 (2) Q. How soon before?  
 (3) A. I believe it was around Christmas  
 (4) week.  
 (5) Q. Did you exchange any e-mails with  
 (6) Brian about that subject around Christmas week?  
 (7) A. I don't recall.  
 (8) Q. You testified that you first  
 (9) learned about the meter change on January 11th;  
 (10) correct?  
 (11) A. Yes.  
 (12) Q. But you're testifying also that  
 (13) Brian told you that the reason for the line  
 (14) item expense resulted from the meter change;  
 (15) correct?  
 (16) MR. MITCHELL: Objection.  
 (17) A. No.  
 (18) MR. MITCHELL: That's not what he  
 (19) said.  
 (20) Q. What did Brian say to you about the  
 (21) line item expense and what he had learned about  
 (22) the reason for it?  
 (23) A. Brian told me that the line item  
 (24) expense had something to do with electrical  
 (25) usage in the Manhasset branch.



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NATIONAL UTILITY SERVICE VS. TIFFANY & CO.

BRIAN ENSOR - 5/14/08

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NATIONAL UTILITY SERVICE

BSA XMAX(5/5)

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- (1) .
- (2) of the meter for the electric service at the
- (3) Manhasset location?
- (4) **A. Yes.**
- (5) **Q. And when did you first become aware**
- (6) **of the replacement of the meter?**
- (7) **A. Through information shared sometime**
- (8) **in the latter part of the fiscal year 2006.**
- (9) **Q. When does the fiscal year begin and**
- (10) **end?**
- (11) **A. Begins February 1 through January**
- (12) **31.**
- (13) **Q. How did you first become aware that**
- (14) **the meter had been changed at the Manhasset**
- (15) **store?**
- (16) **A. Through Bruce Mogel corresponding by**
- (17) **Email.**
- (18) **Q. Have you ever learned why the meter**
- (19) **was changed?**
- (20) **A. No.**
- (21) **Q. Did there come a time when you**
- (22) **became aware of an unusual electric usage**
- (23) **pattern at the Manhasset store?**
- (24) **MR. MITCHELL: Object to the form of**
- (25) **the question.**

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- (1)
- (2) **A. At the latter part of 2006, we,**
- (3) **through the monthly reportings that we have**
- (4) **available to us, we saw an increase in our**
- (5) **supplies costs, which I remember.**
- (6) **Q. I'm sorry, what is the last thing**
- (7) **you said?**
- (8) **A. I remember an increase in our**
- (9) **supplies cost.**
- (10) **Q. You're referring to we and is there**
- (11) **someone else with whom you made that**
- (12) **observation?**
- (13) **A. With the operations manager, Bruce**
- (14) **Edson.**
- (15) **Q. Did you make the observation that**
- (16) **there was an increase in electric costs or was**
- (17) **it more generically costs of supplies for the**
- (18) **store?**
- (19) **A. My observation was more generic,**
- (20) **supplies.**
- (21) **Q. Did you have a conversation with**
- (22) **Bruce Edson about this?**
- (23) **A. Yes.**
- (24) **Q. Did you have more than one**
- (25) **conversation with Bruce about this observation?**

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- (1)
- (2) **A. Yes.**
- (3) **Q. How many conversations in total did**
- (4) **you have with Bruce about the increase in**
- (5) **supplies costs?**
- (6) **A. I don't have an exact remember - I**
- (7) **can't remember exactly how many. It was more**
- (8) **than one.**
- (9) **Q. Okay. Do you recall when the first**
- (10) **conversation you had with Bruce?**
- (11) **A. Late in the fiscal year.**
- (12) **Q. Are you able to fix a month?**
- (13) **A. Not a specific month, no.**
- (14) **Q. As you sit here today, are you**
- (15) **unable to say whether that conversation**
- (16) **occurred in November, December 2006 or**
- (17) **January 2007?**
- (18) **A. I don't remember exactly. It's late**
- (19) **in that year.**
- (20) **Q. What did you say to Bruce and what**
- (21) **did he say to you?**
- (22) **A. My conversation would simply be to**
- (23) **alert Bruce to the unusual dollars spent on**
- (24) **supplies against our planned forecasts and**
- (25) **asking him to look into it.**

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- (1)
- (2) **Q. Do you actually remember saying that**
- (3) **to him or is that something that you think you**
- (4) **would have said under the circumstances?**
- (5) **A. In the circumstances, from what I**
- (6) **remember two years ago, that would have been**
- (7) **really the gist of what I would have said,**
- (8) **yeah. The exact words, I can't remember, but**
- (9) **the gist of these expenses are beyond our**
- (10) **planned expenses, can you look into that?**
- (11) **Q. And what was Bruce's response, if**
- (12) **anything?**
- (13) **A. To go away and take a look at what**
- (14) **the expense -- expenditure was. I mean, give**
- (15) **me an explanation for it.**
- (16) **Q. Did he ever report back to you with**
- (17) **an explanation?**
- (18) **A. In the time that we were**
- (19) **investigating and Bruce was investigating, the**
- (20) **facilities team had also been looking into that**
- (21) **expense, and through Bruce Edson and Bruce**
- (22) **Mogel collaboratively and collectively,**
- (23) **information was sent back to me.**
- (24) **Q. Do you know how the facilities team**
- (25) **became aware of the reason for the increased**

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(1) first.

(2) Q. Okay. And did you read these

(3) reports at or around the time they were issued?

(4) A. Most times.

(5) Q. Okay. Did you read them on a

(6) monthly basis?

(7) A. Yes.

(8) Q. Okay. So always within the month

(9) that the report was issued, you would review

(10) these reports; is that fair?

(11) A. Yes.

(12) Q. Okay. And you would get the reports

(13) that are contained in Exhibit 80 before you

(14) would get the blue book report, right?

(15) A. Yes.

(16) Q. Okay. Now, looking at this

(17) October 11, 2006 report for the period ending

(18) September 30, 2006, I'd like to focus your

(19) attention on the Utility line, okay?

(20) A. Yes.

(21) Q. Do you see that? Okay. Now, it

(22) shows that for the prior year, September 30,

(23) 2005, the Manhasset store spent \$8,569 for

(24) utilities. Do you see that?

(25)

(1) correct?

(2) A. Yes.

(3) Q. And \$6,243 over budget, correct?

(4) A. Yes.

(5) Q. In fact, if you look at the charge,

(6) it's almost twice as much being spent on

(7) utilities in September 2006 than were spent on

(8) utilities in September 2005, correct?

(9) MR. GOODMAN: Objection to the form.

(10) MR. MITCHELL: Withdrawn.

(11) Q. The document reflects a variance

(12) over budget of 1.78 percent, correct?

(13) A. Yes.

(14) Q. I'm sorry, that's wrong.

(15) A. 178 percent.

(16) Q. Yeah, so you are just under two

(17) times for the month alone over budget, right?

(18) A. Yes.

(19) Q. So it was visible on a report

(20) generated by Tiffany delivered to you on

(21) October 11, 2006 that for the month of

(22) September 2006, utility costs at the Manhasset

(23) store were 178 percent of budget for that month

(24) alone, correct?

(25)

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(1) A. Yes.

(2) Q. The planned amount for the month of

(3) September 2006 in the budget was \$8,000,

(4) correct?

(5) A. Yes.

(6) Q. Okay. So with respect to the plan

(7) versus the prior year actual, whoever prepared

(8) that project that had utility costs would be

(9) lower for September than they had been the

(10) prior year, correct?

(11) A. Yes.

(12) Q. And that projection is based not

(13) just on prior year, but on the review of a

(14) number of years of actual usage; is that

(15) correct?

(16) A. Yes.

(17) Q. Okay. Now, the middle column on the

(18) left side for monthly shows that the actual

(19) amount spent on utilities for the Manhasset

(20) store in September 2005 was \$14,243. Do you

(21) see that?

(22) A. Yes.

(23) Q. Which the next two columns show is

(24) \$5,674 over what you'd spent the year before,

(25)

(1) MR. GOODMAN: Objection to the form.

(2) A. Yes.

(3) Q. Okay. And then going to the right

(4) side, we show that on a cumulative basis, you

(5) are on the right side 104 percent of your

(6) budget for utilities as of the end of

(7) September 30, 2006, correct?

(8) A. Yes.

(9) Q. And that would be on a cumulative

(10) basis, right?

(11) A. Yes.

(12) Q. So the prior month, you were under

(13) budget by 6 percent, right?

(14) A. Yes.

(15) Q. And the following month, you're now

(16) over budget by 4 percent?

(17) A. Yes.

(18) Q. Right? That's an 8 percent variance

(19) in one month on an annualized basis, right?

(20) A. Yes.

(21) Q. Okay. Is that the types of things

(22) that you would observe in reviewing these

(23) reports?

(24) A. Yes.

(25)